

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

AUSIMONT INDUSTRIES, INC.; BASF CORP.; BOSTON
AND MAINE CORP., BROWNING-FERRIS INDUSTRIES, INC.)
(MASSACHUSETTS); ALLIED WASTE SYSTEMS, INC.; BFI)
WASTE SYSTEMS OF NORTH AMERICA, LLC; BTU)
INTERNATIONAL, INC.; E.I. DUPONT DE NEMOURS AND)
CO.; HONEYWELL INTERNATIONAL, INC.;)
MALLINCKRODT, LLC; M/A-COM, INC.; RAYTHEON CO.;)
SEARS, ROEBUCK AND CO.; TEXTRON SYSTEMS CORP.;)
TOWN OF TEWKSBURY; VERIZON NEW ENGLAND, INC.;)
WASTE MANAGEMENT OF MASSACHUSETTS, INC.;)
WASTE MANAGEMENT DISPOSAL SERVICES OF)
MASSACHUSETTS, INC.; WASTE MANAGEMENT OF NEW)
HAMPSHIRE, INC.; ZENECA, INC.; EMHART INDUSTRIES,)
INC.; HOLT & BUGBEE CO.; NATIONAL GRID USA;)
LOCKHEED MARTIN CORP.; TEWKSBURY STATE)
HOSPITAL; THE GILLETTE CO.; 3M CO.; AMERICAN)
SCIENCE AND ENGINEERING, INC.; ANTON'S CLEANERS,)
INC.; CABOT CORP.; LEGGETT & PLATT, INC.;)
COMPUTERVISION LLC; FISIONS CORP.; FC MEYER)
PACKAGING, LLC and MILLEN, INC.; SPX CORP.;)
GENERAL LATEX AND CHEMICAL CORP.; HEWLETT-)
PACKARD CO.; MAJILITE MANUFACTURING, INC.;)
MASSACHUSETTS BAY TRANSPORTATION AUTHORITY;)
MASSACHUSETTS INSTITUTE OF TECHNOLOGY;)
SCHNEIDER AUTOMATION DIVISION OF SQUARE D CO.;)
NEW BALANCE ATHLETIC SHOE, INC.; PICONICS, INC.;)
ROCHE BROTHERS BARREL AND DRUM CO., INC.; THE)
SHERWIN-WILLIAMS CO.; TRW AUTOMOTIVE US LLC;)
TUTOR PERINI CORP.; VISHAY INTERTECHNOLOGY, INC.;)
AND W.R. GRACE & CO.)

Defendants.

CIVIL ACTION NO.

**NOTICE OF LODGING
OF CONSENT DECREE**

Plaintiff, the United States of America, notifies the Court and the parties that at the same time it is filing its Complaint in this action, pursuant to Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9606 and 9607(a), regarding the Sutton Brook Disposal Area Superfund Site (“Site”) in Tewksbury, Massachusetts, it is lodging a consent decree that would fully resolve the violations alleged in the Complaint. A copy of the Consent Decree executed by all of the parties is attached as Exhibit 1 to this Notice of Lodging.

Additionally, in a related action with respect to the Site, the Commonwealth of Massachusetts, a co-plaintiff to the proposed Consent Decree, is also simultaneously filing today a Complaint. The proposed consent decree, attached as Exhibit 1, would also fully resolve the violations alleged in the related civil action by the Commonwealth of Massachusetts.

Pursuant to Department of Justice policy, the proposed Consent Decree must be subject to public comment before it is entered by the Court. Accordingly, the Court should refrain from entering the proposed Consent Decree at this time.

The United States will publish notice of the proposed Consent Decree in the Federal Register and solicit public comment for a period of thirty days. After receiving public comments, the United States will consider whether the comments disclose facts or considerations which indicate that the proposed Consent Decree is inappropriate, improper, or inadequate. If so, the United States will withdraw its consent to the proposed Consent Decree; if not, the United States will move the Court for entry of the proposed Consent Decree. Pursuant to the terms of the Consent Decree, the Commonwealth will likewise consider comments for ninety days following this thirty-day period. The United States and the Commonwealth will move for entry

of the Consent Decree as appropriate after the comment period expires.

Respectfully submitted,

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Environment and Natural Resources Division
United States Department of Justice

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of December 2009, a copy of the foregoing Notice of Lodging of Consent Decree, with the proposed executed Consent Decree attached hereto as Exhibit 1 and other Exhibits 2-12, was filed electronically, and served by first-class mail, postage prepaid to all Settling Defendants through their designated agents listed below. Parties may access this filing electronically through the Court's CM/ECF system.

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA and
COMMONWEALTH OF MASSACHUSETTS,

Plaintiffs,

v.

AUSIMONT INDUSTRIES, INC., et al.,

Defendants.

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) Civil Action No. 1:09-cv-12169
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CONSENT DECREE

Sutton Brook Disposal Area Superfund Site Consent Decree

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (“CERCLA”), 42 U.S.C. §§ 9606 and 9607.

B. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Federal and State natural resource trustees on February 6, 2008, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal and/or State trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

C. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Sutton Brook Disposal Area Superfund Site in Tewksbury, Massachusetts (“Site”), together with accrued interest; (2) performance of response actions at the Site by the defendants consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (“NCP”); and (3) payment of Natural Resource Damages.

D. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the Commonwealth of Massachusetts (the “Commonwealth”) on February 6, 2008, of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the Commonwealth with an opportunity to participate in such negotiations and be a party to this Consent Decree.

E. The Commonwealth, by and through the Massachusetts Department of Environmental Protection (“MassDEP”) and the Massachusetts Attorney General, has also filed a complaint against the defendants in this Court alleging that the defendants are liable to the Commonwealth under Section 107 of CERCLA, 42 U.S.C. § 9607, and the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, M. G. L. c. 21E (“Chapter 21E”), for: (1) reimbursement of response costs incurred or to be incurred by the Commonwealth for response actions at the Site, together with accrued interest; (2) performance of response actions, including without limitation operation and maintenance activities required to maintain the effectiveness of the remedial action to be implemented at the Site; and (3) payment of Natural Resource Damages.

F. The defendants that have entered into this Consent Decree (“Settling Defendants”) do not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaints, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

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G. Pursuant to Chapter 21E, MassDEP placed the Site on its List of Disposal Sites and Locations to be Investigated, dated April 15, 1992.

H. In response to a release or threat of release of oil or hazardous material at or from the Site, in accordance with Chapter 21E and the Massachusetts Contingency Plan, 310 C.M.R. 40.0000 (“the MCP”), beginning in 1992 or earlier, MassDEP conducted or arranged to conduct certain site assessment, investigation and/or response actions at the Site.

I. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on June 14, 2001, 66 Fed. Reg. 32235.

J. On October 10, 2001, EPA issued a Unilateral Administrative Order which ordered certain Settling Defendants to complete the removal action initiated by EPA, specifically to remove stockpiled contaminated soil from the Site and dispose of it at an off-Site location.

K. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, certain Settling Defendants commenced, pursuant to an agreement reached in February 2004, a Remedial Investigation and Feasibility Study (“RI/FS”) for the Site pursuant to 40 C.F.R. § 300.430.

L. Certain Settling Defendants completed a Remedial Investigation (“RI”) Report in February 2007, and completed a Feasibility Study (“FS”) Report in May 2007.

M. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the Proposed Plan for remedial action on June 15, 2007, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

N. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision (“ROD”), executed on September 27, 2007, on which the Commonwealth has given its concurrence on September 26, 2007. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b). The ROD estimates that the total volume of material, including waste, at the Site is 1.9 million cubic yards in the Northern Lobe and .3 million cubic yards in the Southern Lobe.

O. Based on the information presently available to EPA and the Commonwealth, EPA and the Commonwealth believe that the Work (as defined in Section IV) will be properly and promptly conducted by Performing Settling Defendants (as defined below) if conducted in accordance with the requirements of this Consent Decree and its appendices.

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P. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the Remedial Action selected by the ROD and the Work to be performed by Performing Settling Defendants shall constitute a response action taken or ordered by the President.

Q. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b), and pendent subject matter jurisdiction over the claims arising under the laws of the Commonwealth. This Court also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States, the Commonwealth and upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Performing Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Performing Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Performing Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Performing Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated under this Consent Decree in accordance with its terms. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with Performing Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3), and of Section 5(c)(3) of Chapter 21E.

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IV. DEFINITIONS

4. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. With respect to the Commonwealth's claims under Chapter 21E, terms used in this Consent Decree which are defined in Chapter 21E or the MCP shall have the meanings assigned to them in Chapter 21E or the MCP to the extent they are not defined in or inconsistent with CERCLA or the NCP. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"Approval by EPA," "Approved by EPA," "Approved," and "Approval" shall mean the issuance of a written approval document from EPA approving, approving with conditions, and/or modifying a submission in accordance with Section XI. With respect to Section IX, "Approval by EPA and MassDEP," and "Approved by EPA and MassDEP" shall mean the issuance of written approval documents by EPA and MassDEP approving, approving with conditions, and/or modifying a submission.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*

"Cashout Settling Defendants" shall mean the parties identified in Appendix D-2.

"Commonwealth" shall mean the Commonwealth of Massachusetts.

"Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXVIII). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"De Minimis Settling Defendants" shall mean the parties identified in Appendix D-3.

"De Minimis Trust" shall mean the Sutton Brook Disposal Area Superfund Site De Minimis Settlement Trust. The Sutton Brook Disposal Area Superfund Site De Minimis Settlement Trust Agreement is attached hereto as Appendix F-1.

"DOI" shall mean the United States Department of the Interior and any successor departments, agencies or instrumentalities of the United States.

"EEA" shall mean the Massachusetts Executive Office of Energy and Environmental Affairs and any successor departments, agencies or instrumentalities of the Commonwealth.

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“Effective Date” shall be the earlier of the date upon which this Consent Decree is entered by the Court or the date upon which the order granting the motion to enter the Consent Decree is entered by the Court, as recorded on the Court docket, except as otherwise provided in this Consent Decree.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“Institutional Controls” shall mean those aspects of the response action involving legal and administrative measures, but not engineering controls, required to ensure the long-term effectiveness and protectiveness of response actions performed at the Site. Institutional Controls may include, but not be limited to, a grant of environmental restriction and easement (hereinafter referred to as a “GERE”), the form of which is attached as Appendix E of this Consent Decree.

“Interest” shall mean, for payments owed to the United States, interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a); and for payments owed to the Commonwealth, the rate set forth in M. G. L. c. 21E, § 13. The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest for payments owed to the United States is subject to change on October 1 of each year.

“Massachusetts Contingency Plan” or “MCP” shall mean the regulations promulgated pursuant to M. G. L. c. 21E, codified at 310 C.M.R. 40.0000, et seq., and any amendments thereto.

“MassDEP” shall mean the Massachusetts Department of Environmental Protection and any successor departments or agencies of the Commonwealth.

“M. G. L. c. 21C” or “Chapter 21C” shall mean the Massachusetts Hazardous Waste Management Act, as amended.

“M. G. L. c. 21E” or “Chapter 21E” shall mean the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, as amended.

“Municipal Solid Waste” or “MSW” shall mean waste material: (a) generated by a household (including a single or multifamily residence); or (b) generated by a commercial, industrial or institutional entity, to the extent that the waste material (i) is essentially the same as waste normally generated by a household; (ii) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and (iii) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

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“Natural Resources” shall mean “natural resources” as that term is defined in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

“Natural Resource Damages” shall mean damages for injury to, destruction of, or loss of Natural Resources relating to the Site, including the reasonable cost of assessing such damages, as provided in Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C), incurred as a result of releases or threats of release of hazardous substances at or from the Site; and, when referring to the Commonwealth, shall also mean injury to, destruction of, or loss of Natural Resources relating to the Site, including the reasonable cost of assessing such damages, as provided in Section 5(a) of Chapter 21E, incurred or suffered as a result of releases or threats of release of hazardous substances at or from the Site.

“NR Trustees” shall mean the designated federal and state officials who may act on behalf of the public as trustees for the Natural Resources regarding the Site, namely DOI represented by the Fish and Wildlife Service as the federal trustee for Natural Resources regarding the Site, and the EEA as the state trustee for Natural Resources.

“Operation and Maintenance” or “O & M” shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan, including without limitation the Institutional Controls Plan, approved or developed by EPA pursuant to Section VI (Performance of the Work by Performing Settling Defendants) and the Statement of Work (“SOW”).

“Oversight Costs” shall mean all costs, including but not limited to direct and indirect costs, that EPA and MassDEP and their representatives (including contractors) incur after the date of lodging of the Consent Decree in conducting the following activities: reviewing, discussing, commenting on and attending meetings related to plans, proposals, studies, or other items relating to the Work; verifying the Work; and overseeing Performing Settling Defendants’ implementation of the Work; but exclusive of, *inter alia*, any such costs incurred by the United States or the Commonwealth pursuant to Paragraph 9 (Notice to Successors in Title), Sections VII (Remedy Review), IX (Access and Institutional Controls), XV (Emergency Response), and Paragraph 111 of Section XXI (Work Takeover); community relations costs, enforcement support costs; record management costs; ATSDR costs; accrued Interest; or the costs incurred by the United States or the Commonwealth in enforcing the terms of this Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to Section XIX (Dispute Resolution) and all litigation costs. Oversight Costs shall not include United States Future Response Costs or State Future Response Costs.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean the United States, the Commonwealth of Massachusetts and Settling Defendants.

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“Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section L of the ROD and Section 5 of the SOW.

“Performing Settling Defendants” shall mean the parties identified in Appendix D-1.

“Plaintiffs” shall mean the United States and the Commonwealth of Massachusetts.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Site signed on September 27, 2007, by the Regional Administrator, EPA Region 1, or his/her delegate, and all attachments thereto. The ROD is attached as Appendix A.

“Remedial Action” shall mean those activities, except for Remedial Design and Operation and Maintenance, to be undertaken by Performing Settling Defendants to implement the ROD, in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

“Remedial Action Work Plan” shall mean the document developed pursuant to Paragraph 12 and approved by EPA, and any amendments thereto.

“Remedial Design” shall mean those activities to be undertaken by Settling Defendants to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

“Remedial Design Work Plan” shall mean the document developed pursuant to Paragraph 11 and approved by EPA, and any amendments thereto.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendants” shall mean Performing Settling Defendants, Cashout Settling Defendants and De Minimis Settling Defendants.

“Site” shall mean the Sutton Brook Disposal Area Superfund Site, encompassing approximately 100 acres, located off South Street in Tewksbury, Middlesex County, Massachusetts, and depicted generally on the map attached as Appendix C.

“State” shall mean the Commonwealth of Massachusetts.

“State Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the Commonwealth incurs pursuant to this Consent Decree after the date of lodging, other than Oversight Costs, and shall include, but not be limited to: payroll costs; contractor costs; travel costs; laboratory costs; costs incurred pursuant to Paragraph 9 (Notice to Successors in Title), Sections VII (Remedy Review), IX (Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement Institutional Controls including, but not limited to, the amount of

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just compensation, and costs incurred in the management or administration of Institutional Controls following implementation including, but not limited to, costs related to Institutional Controls compliance and enforcement activities and any amendment or other modification of the Institutional Controls), XV (Emergency Response), and Paragraph 111 of Section XXI (Work Takeover); community relations costs; enforcement support costs; records management costs; accrued Interest; and the costs incurred by the Commonwealth in enforcing the terms of this Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to Section XIX (Dispute Resolution) and all litigation costs.

“State Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the Commonwealth paid or incurred at or in connection with the Site up to the date of the lodging of the Consent Decree, plus Interest on all such costs which was accrued pursuant to Section 13 of Chapter 21E, through the Effective Date.

“Statement of Work” or “SOW” shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix B to this Consent Decree, and any modifications made in accordance with this Consent Decree.

“Supervising Contractor” shall mean the principal contractor retained by Settling Defendants to supervise and direct the implementation of the Work under this Consent Decree.

“Sutton Brook Disposal Area Superfund Site Special Account” shall mean the special account, within the EPA Hazardous Substances Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and the Administrative Order by Consent For Remedial Investigation and Feasibility Study for the Sutton Brook Disposal Area Superfund Site, EPA Docket No. CERCLA 01-2004-0002.

“Town” shall mean the Town of Tewksbury, Massachusetts, which is one of the Performing Settling Defendants.

“Trust” shall mean the Sutton Brook Disposal Area Superfund Site Settlement Trust. The form of the Sutton Brook Disposal Area Superfund Site Settlement Trust Agreement is attached hereto as Appendix F-2.

“United States” shall mean the United States of America, including all of its departments, agencies, and instrumentalities, which includes without limitation EPA and any federal natural resource trustee.

“United States Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs after the date of lodging of this Consent Decree pursuant to the provisions of this Consent Decree other than those costs specifically included in the definition of Oversight Costs. United States Future Response Costs shall include, but not be limited to: payroll costs; contractor costs; travel costs; laboratory costs; costs incurred pursuant to Paragraph 9 (Notice to Successors in Title), Sections VII (Remedy Review), IX

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(Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement Institutional Controls including, but not limited to, the amount of just compensation, and costs incurred in the management or administration of Institutional Controls following implementation including, but not limited to, costs related to Institutional Controls compliance and enforcement activities and any amendment or other modification of the Institutional Controls), XV (Emergency Response), and Paragraph 111 of Section XXI (Work Takeover); community relations costs; enforcement support costs; records management costs; accrued Interest; and the costs incurred by the United States in enforcing the terms of this Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to Section XIX (Dispute Resolution) and all litigation costs.

“United States Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid or incurred at or in connection with the Site up to the date of the lodging of the Consent Decree, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); (4) any “hazardous material” or “oil” under M. G. L. c. 21E, § 2; and (5) any “hazardous waste” under M. G. L. c. 21C, § 2.

“Work” shall mean all activities, including without limitation all Operation and Maintenance, Performing Settling Defendants are required to perform under this Consent Decree, except those required by Section XXV (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment by the design and implementation of response actions at the Site by Settling Defendants, to reimburse response costs of Plaintiffs, to provide for reimbursement by the Settling Defendants of Natural Resource Damages incurred by DOI and EEA, and to resolve the claims of Plaintiffs against Settling Defendants as provided in this Consent Decree. With respect to each De Minimis Settling Defendant, the mutual objectives of the Parties are also:

a. to reach a final settlement among the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), and Chapter 21E, that allows each De Minimis Settling Defendant to make a cash payment, including a premium, to resolve its alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Chapter 21E, for injunctive relief with regard to the Site, for response costs incurred and to be incurred at or in connection with the Site, and for Natural Resource Damages, thereby reducing litigation relating to the Site;

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b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a number of potentially responsible parties from further involvement at the Site; and

c. to obtain settlement with each De Minimis Settling Defendant for its fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, by MassDEP, and by other persons, and to provide for full and complete contribution protection for each De Minimis Settling Defendant with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), and Chapter 21E.

6. Commitments by Settling Defendants.

a. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth in this Consent Decree or developed by Performing Settling Defendants and approved by EPA, after a reasonable opportunity for review and comment by the Commonwealth, pursuant to this Consent Decree. Performing Settling Defendants shall also reimburse the United States for United States Future Response Costs and Oversight Costs and the Commonwealth for State Past Response Costs, State Future Response Costs and Oversight Costs as provided in this Consent Decree. Performing Settling Defendants shall also compensate the United States and the Commonwealth for Natural Resource Damages.

b. The obligations of Performing Settling Defendants to finance and perform the Work and to pay amounts owed the United States and the Commonwealth under this Consent Decree are joint and several. In the event of the insolvency of any Performing Settling Defendant or the failure by any Performing Settling Defendant to implement any requirement of this Consent Decree, the remaining Performing Settling Defendants shall fulfill the obligations of the non-performing Performing Settling Defendant and all remaining requirements of the Consent Decree; provided, however, that only the Town shall be obligated pursuant to Paragraph 56.

c. Each Cashout Settling Defendant shall pay or cause to be paid to the Trust the amount specified for that Cashout Settling Defendant in Appendix D-2 to this Consent Decree, as provided in this Consent Decree.

d. Each De Minimis Settling Defendant shall pay or cause to be paid to the De Minimis Trust the amount specified for that De Minimis Settling Defendant in Appendix D-3 to this Consent Decree, as provided in this Consent Decree. However, De Minimis Settling Defendant W.R. Grace & Co. and certain of its affiliates and subsidiaries (collectively, "Grace") have filed a petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court"). Grace expects to emerge from bankruptcy in late 2009 or early 2010. In order to receive authority to remit its payment pursuant to Paragraph 58 (Payments by De Minimis Settling Defendants), Grace shall file and serve a Notice of Settlement with the Bankruptcy Court within 30 days of the Effective

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Date to allow review by creditor groups and other interested parties of Grace's intent to make its payment pursuant to Paragraph 58 (Payments by De Minimis Settling Defendants) as an unsecured, pre-petition, non-priority claim against Grace's Chapter 11 estates in the amount set forth in Appendix D-3 to this Consent Decree. The Notice of Settlement shall state that Grace's obligation to pay the amount set forth in Appendix D-3 to this Consent Decree shall not become effective and binding until, following Grace's filing and service of the Notice of Settlement, all time periods provided for therein have passed without objection or any objection that was made has been resolved or overruled by the Bankruptcy Court. Upon allowance, Grace's payment pursuant to Paragraph 58 (Payments by De Minimis Settling Defendants) shall be made in the same manner as all other similarly situated general unsecured claims pursuant to the Bankruptcy Court's Order Authorizing Settlement Agreement Resolving the United States' Proofs of Claim Regarding Certain Environmental Matters and Grace's confirmed Plan of Reorganization. Upon allowance, Grace shall pay the amount set forth in Appendix D-3 to this Consent Decree within 30 days of the effective date of its confirmed Plan of Reorganization.

7. Compliance With Applicable Law. All activities undertaken by Performing Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Performing Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be deemed to be consistent with the NCP and the MCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, 40 C.F.R. § 300.400(e), no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Performing Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Performing Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work, provided they have submitted timely and complete applications and taken all other actions necessary to obtain such permits or approvals.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

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9. Notice to Successors-in-Title.

a. Each Settling Defendant, with respect to any property it owns or controls within the Site following the Effective Date, shall within the later of 15 days after the Effective Date or 15 days after acquiring such ownership or control of the property submit to EPA for review and approval, with a copy to MassDEP, a notice to be recorded with the Middlesex North Registry of Deeds, Commonwealth of Massachusetts, or other appropriate land records office, which shall provide notice to all successors-in-title that: (i) the property is part of the Site; (ii) EPA selected a remedy for the Site on September 27, 2007, following MassDEP's concurrence; (iii) potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy; and (iv) the property is subject to certain obligations to provide access and to restrict its use, pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, including the possible establishment of a grant of environmental restriction and easement ("GERE") affecting all or a portion of the property, pursuant to said Section IX, substantially in the form of Appendix E ("Form of Grant of Environmental Restriction and Easement") of this Consent Decree. Such notice shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. Such Settling Defendant shall record such notice within 10 days of EPA's approval thereof, and shall provide EPA and MassDEP with a certified copy of each such recorded notice within 10 days of recording. Thereafter, any deeds, easements, mortgages, leases, licenses, occupancy agreements, or any other instruments conveying an interest in and/or a right to use the property, or any portion thereof, shall reference the recorded location of such notice.

b. At least 30 days prior to the conveyance of any deeds, easements, mortgages, leases, licenses, occupancy agreements, or any other instruments conveying an interest in and/or a right to use any property located within the Site, or any portion thereof, any Settling Defendant conveying such interest shall give the grantee written notice of this Consent Decree, including the above-described requirements, and shall also give written notice to EPA and MassDEP of the proposed conveyance, including the name and address of the grantee, and the date on which said notice was given to the grantee. If the GERE and/or any other instrument establishing access or imposing restrictions on the property pursuant to this Consent Decree has been recorded at said Registry or other appropriate land records office, the Settling Defendant conveying such interest shall reference such GERE and/or other instrument in all subsequent deeds, easements, mortgages, leases, licenses, occupancy agreements, or any other instruments conveying an interest in and/or a right to use the property, or any portion thereof.

c. In the event of any such conveyance, the Settling Defendant's obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access to the property, and to establish on the property Institutional Controls pursuant to Section IX (Access and Institutional Controls), including satisfaction of all requirements contained therein, shall continue to be met by the Settling Defendant conveying such interest. In no event shall a conveyance of the property, or any interest therein, release or otherwise affect the liability of the Settling Defendant conveying such interest to comply with all provisions of this Consent

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Decree, absent the prior written consent of EPA and MassDEP. If the United States approves, after a reasonable opportunity for review and comment by the Commonwealth, the grantee may perform some or all of the Work under this Consent Decree.

VI. PERFORMANCE OF THE WORK BY PERFORMING SETTling DEFENDANTS

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Performing Settling Defendants pursuant to this Section and Sections VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA, after a reasonable opportunity for review and comment by the Commonwealth. Within 10 days after the lodging of the Consent Decree, Performing Settling Defendants shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Performing Settling Defendants shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Performing Settling Defendants propose to change a Supervising Contractor, Performing Settling Defendants shall give such notice to EPA and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the Commonwealth, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Performing Settling Defendants in writing. Performing Settling Defendants shall submit to EPA and MassDEP a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Performing Settling Defendants may select any contractor from that list that is not disapproved and shall notify EPA and MassDEP of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents Performing Settling Defendants from meeting one or more deadlines in a plan approved by EPA pursuant to this Consent Decree, Performing Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) hereof.

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11. Remedial Design.

a. Within 21 days after EPA's issuance of an authorization to proceed pursuant to Paragraph 10, Performing Settling Defendants shall submit to EPA and MassDEP a Design Schedule, as required by Section 6 of the SOW, attached as Appendix B hereto, for EPA review and approval or modification or disapproval. Performing Settling Defendants shall submit a work plan for the design of the Remedial Action ("Remedial Design Work Plan" or "RD Work Plan") in accordance with the approved Design Schedule. The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD, in accordance with the SOW, and for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree and/or the SOW. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. In accordance with the approved Design Schedule, Performing Settling Defendants shall submit to EPA and MassDEP a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW. In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action Work Plan.

c. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the Commonwealth, and submission of the Health and Safety Plan for all field design activities to EPA and MassDEP, Performing Settling Defendants shall implement the Remedial Design Work Plan. Performing Settling Defendants shall submit to EPA and MassDEP all plans, reports, and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Performing Settling Defendants shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

12. Remedial Action.

a. Within 30 days after the approval of the final design submission, Performing Settling Defendants shall submit to EPA and MassDEP a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA, after a reasonable opportunity for review and comment by the Commonwealth. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as Performing Settling Defendants submit the Remedial Action Work Plan,

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Performing Settling Defendants shall submit to EPA and MassDEP a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements, including, but not limited to, 29 C.F.R. § 1910.120.

b. Upon approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the Commonwealth, Performing Settling Defendants shall implement the activities required under the Remedial Action Work Plan. Performing Settling Defendants shall submit to EPA and MassDEP all plans, reports, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Performing Settling Defendants shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

13. Performing Settling Defendants shall continue to implement the Remedial Action and O & M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

14. Modification of the SOW or Related Work Plans.

a. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated in the SOW and/or such work plans, provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

b. For the purposes of this Paragraph 14 and Paragraphs 52 (Completion of the Remedial Action) and 53 (Completion of the Work) only, the “scope of the remedy selected in the ROD” is: the remedy described in Section L of the ROD, whose major components include but are not limited to: excavation of contaminated soils and sediments above site-specific cleanup levels; consolidation of excavated soils, sediments and debris into the landfills; construction of a low permeability cap over the landfill lobes; interception of groundwater from the southern lobe to prevent it from entering Sutton Brook; a combination of collection and treatment and monitored natural attenuation for contaminated groundwater; institutional controls; and all operation and maintenance, including without limitation long-term monitoring.

c. If Performing Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Paragraph 79 (Record Review) of Section XIX (Dispute Resolution). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

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d. Performing Settling Defendants shall implement any work required by any modifications incorporated into the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

15. Nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

16. a. Performing Settling Defendants shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed ten cubic yards.

(1) Performing Settling Defendants shall include in the written notification the following information, where available: (a) the name and location of the facility to which the Waste Material is to be shipped; (b) the type and quantity of the Waste Material to be shipped; (c) the expected schedule for the shipment of the Waste Material; and (d) the method of transportation. Performing Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

(2) The identity of the receiving facility and state will be determined by Performing Settling Defendants following the award of the contract for Remedial Action construction. Performing Settling Defendants shall provide the information required by Paragraph 16(a) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any Waste Material from the Site to an off-site location, Performing Settling Defendants shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Performing Settling Defendants shall only send Waste Material from the Site to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.

VII. REMEDY REVIEW

17. Periodic Review. Performing Settling Defendants shall conduct any studies and investigations that EPA requests, after a reasonable opportunity for review and comment by the Commonwealth, in order to permit EPA to conduct reviews of whether the Remedial Action is

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protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations.

18. EPA Selection of Further Response Actions. If EPA determines, at any time, after a reasonable opportunity for review and comment by the Commonwealth, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site, after a reasonable opportunity for review and comment by the Commonwealth, in accordance with the requirements of CERCLA and the NCP.

19. Opportunity To Comment. Performing Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. § 9613(k)(2) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

20. Performing Settling Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, after a reasonable opportunity for review and comment by the Commonwealth, Performing Settling Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 99 or Paragraph 100 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Performing Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination, after a reasonable opportunity for review and comment by the Commonwealth, that the reopener conditions of Paragraph 99 or Paragraph 100 of Section XXI (Covenants Not To Sue by Plaintiffs) are satisfied, (2) EPA's determination, after a reasonable opportunity for review and comment by the Commonwealth, that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection, after a reasonable opportunity for review and comment by the Commonwealth, of the further response actions. Such disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 79 (Record Review) of Section XIX (Dispute Resolution).

21. Submissions of Plans. If Performing Settling Defendants are required to perform the further response actions pursuant to Paragraph 20, they shall submit a plan for such work to EPA and MassDEP for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Performing Settling Defendants) and shall implement the plan approved by EPA, after a reasonable opportunity for review and comment by the Commonwealth, in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

22. Performing Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by EPA to Performing

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Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Performing Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the Commonwealth, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA, after a reasonable opportunity for review and comment by the Commonwealth, shall be admissible as evidence, without objection, in any proceeding under this Decree. Performing Settling Defendants shall contractually require that EPA and Commonwealth personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Performing Settling Defendants in implementing this Consent Decree. In addition, Performing Settling Defendants shall contractually require that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP(s) for quality assurance monitoring. Performing Settling Defendants shall contractually require that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods that are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" (currently ILM05.3/ILM05.4) and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988 (currently OLM04.3), and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, after a reasonable opportunity for review and comment by the Commonwealth, Performing Settling Defendants may use other analytical methods which are as stringent as or more stringent than the CLP-approved methods. Performing Settling Defendants shall contractually require that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Performing Settling Defendants shall use only laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by EPA, after a reasonable opportunity for review and comment by the Commonwealth. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements. Performing Settling Defendants shall contractually require that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP(s) approved by EPA. Performing Settling Defendants shall diligently enforce the terms of all contracts with any and all laboratories utilized by Performing Settling Defendants in implementing this Consent Decree.

23. Upon request, Performing Settling Defendants shall allow split or duplicate samples to be taken by EPA and MassDEP or their authorized representatives. Performing Settling Defendants shall notify EPA and MassDEP not less than 28 days in advance of any

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sample collection activity unless shorter notice is agreed to by EPA and MassDEP. In addition, EPA and MassDEP, respectively, shall each have the right to take any additional samples that either EPA or MassDEP deems necessary, and upon request, shall provide Performing Settling Defendants with all sampling data generated therefrom. Upon request, EPA and MassDEP shall allow Performing Settling Defendants to take split or duplicate samples of any samples they take as part of Plaintiffs' oversight of Performing Settling Defendants' implementation of the Work.

24. Unless EPA and MassDEP agree in writing to a smaller number or different transmittal method, Performing Settling Defendants shall submit six (6) copies to EPA and two (2) copies to MassDEP of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Performing Settling Defendants with respect to the Site and/or the implementation of this Consent Decree.

25. Notwithstanding any provision of this Consent Decree, the United States and the Commonwealth hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, Chapter 21C, Chapter 21E and any other applicable Federal or State statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

26. Each Settling Defendant shall, with respect to any property that it owns or controls on or after the date of lodging of this Consent Decree, and where access and/or land/water use restrictions are needed to implement this Consent Decree:

a. commencing on the date of lodging of this Consent Decree, provide the United States, the Commonwealth, and their representatives, including EPA, MassDEP and their respective contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States and/or the Commonwealth;
- (3) Conducting investigations relating to contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 111 (Work Takeover);

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(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Performing Settling Defendants or their agents, consistent with Section XXIV (Access to Information);

(9) Assessing Performing Settling Defendants' compliance with this Consent Decree; and

(10) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree; and

c. execute and record, to the extent required under the approved Institutional Control Plan under the SOW, in the Middlesex North Registry of Deeds or Land Registration Office, as applicable, Commonwealth of Massachusetts, a grant of environmental restriction and easement (hereinafter referred to as a "GERE"), the form of which is attached as Appendix E of this Consent Decree, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendant shall grant the access rights and the rights to enforce the land/water use restrictions to (i) the United States, on behalf of EPA, and its representatives, or (ii) other appropriate grantees as determined by EPA. Such GERE shall be fully assignable, in whole or in part. The Commonwealth, in entering into this Consent Decree, does not agree, either on its behalf or on behalf of MassDEP, and this Consent Decree shall not constitute the Commonwealth's or MassDEP's agreement, to accept such GERE as is described in this Subparagraph 26(c) or an assignment of any such GERE. No grant or assignment of the GERE to MassDEP shall be recorded without MassDEP's prior written acceptance of such grant or assignment, in accordance with the provisions of Section 6 of Chapter 21E, as amended. Notwithstanding any other provision of this Consent Decree, MassDEP fully reserves all rights to condition its acceptance of any grant or assignment of any GERE upon full and complete satisfaction by the grantor or assignor of any requirements for implementing such grant or such assignment, respectively, that MassDEP, in its sole discretion, may deem appropriate. MassDEP shall identify such requirements upon request or at such other time as MassDEP deems appropriate. Any disputes that may arise related to MassDEP's requirements or a determination not to accept a GERE are outside the scope of and do not arise under this Consent Decree. Such Settling Defendant shall, within 60 days after notice from EPA, submit to EPA and MassDEP for review and approval with respect to such property:

(1) a fully executed GERE, in substantially the form of Appendix E hereto, that is enforceable under the laws of the Commonwealth, free and clear of all prior liens

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and encumbrances (except as approved by EPA and MassDEP), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 3111;

(2) a current title commitment or Certification of Title prepared in accordance with the U.S. Department of Justice Title Standards 2001 (the "Standards"); and

(3) any other documents, including but not limited to a Subordination Agreement for any prior liens and encumbrances, and a survey plan, if required by EPA pursuant to CERCLA and/or MassDEP pursuant to M. G. L. c. 21E.

d. Within 15 days of EPA's and MassDEP's approval of the GERE, title commitment or Certification of Title, and other required documents, such Settling Defendant shall update the title commitment or Certification of Title and, if any additional encumbrances have been recorded since the effective date of the title commitment or Certification of Title, the GERE shall not be recorded but such Settling Defendant shall immediately notify EPA and MassDEP and provide a copy of each such encumbrance. If no additional encumbrances have been recorded since the effective date of the title commitment or Certification of Title, or upon receipt from EPA and MassDEP of written approval to proceed, such Settling Defendant shall record and/or register the GERE, the Subordination Agreement(s), if any, and the survey plan with the Middlesex North Registry of Deeds or Land Registration Office, as applicable.

e. Within 30 days of recording and/or registering the GERE, the Subordination Agreement(s), if any, and the survey plan, such Settling Defendant shall submit to EPA and MassDEP:

(1) a certified Registry copy of the GERE and Subordination Agreement(s), if any, bearing the book and page/instrument number and/or document number;

(2) a Registry copy of the required survey plan(s) referenced in the GERE, bearing the plan book/plan number; and

(3) if the property subject to the GERE is unregistered land, a Registry copy of the deed into the owner of the property, bearing the marginal reference required by 310 C.M.R. 40.1071(3)(a).

27. In all appropriate cases, the Town of Tewksbury, a Performing Settling Defendant, has agreed to initiate an action for failure to pay property taxes and complete all necessary steps to take title to all real property in the Town of Tewksbury previously or currently owned or partially owned by Anthony Rocco, Jeannette E. Rocco, Anthony J. Rocco and/or Walter Rocco, or their respective estates ("Rocco Property"), where access and/or land/water use restrictions are needed to implement this Consent Decree, as described in Subparagraph 26(c).

a. As noted in the form GERE attached hereto at Appendix E, the specific terms of said land/water use restrictions, any related permitted uses and activities, and any obligations and conditions to be established in any GERE required pursuant to this Consent Decree shall be determined in accordance with this Consent Decree and the SOW attached hereto as Appendix B.

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b. The Parties note that Subparagraph 26(c) establishes a 60-day time period commencing, with respect to the Town, upon notice from EPA to the Town requiring the Town to comply with Subparagraphs 26(c)(1) through (3). Unless otherwise agreed among EPA, MassDEP and the Town, and provided that the Town is diligently proceeding with the action to take title to the Rocco Property, said 60-day time period shall not commence with respect to the Town unless and until: (i) the Town has completed acquisition of title to the Rocco Property and (ii) all rights of redemption or appeal have been exhausted or, if exercised, only after the Town has successfully defended its title against such rights, provided that the Town diligently defends the same.

28. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Defendants, Performing Settling Defendants shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Performing Settling Defendants, as well as for the United States on behalf of EPA, and the Commonwealth on behalf of MassDEP, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26(a);

b. an agreement, enforceable by Performing Settling Defendants, the United States and/or MassDEP, to refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree; and

c. to the extent required under the approved Institutional Control Plan under the SOW, the execution and recordation in the Middlesex North Registry of Deeds or Land Registration Office, as applicable, Commonwealth of Massachusetts, of a GERE, the form of which is attached as Appendix E of this Consent Decree, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to (i) the United States, on behalf of EPA, and its representatives, or (ii) other appropriate grantees as determined by EPA. Such GERE shall be fully assignable, in whole or in part. The Commonwealth, in entering into this Consent Decree, does not agree, either on its behalf or on behalf of MassDEP, and this Consent Decree shall not constitute the Commonwealth's or MassDEP's agreement, to accept such GERE as is described in this Subparagraph 28(c) or an assignment of any such GERE. No grant or assignment of the GERE to MassDEP shall be recorded without MassDEP's prior written acceptance of such grant or assignment, in accordance with the provisions of Section 6 of Chapter 21E, as amended. Notwithstanding any other provision of this Consent Decree, MassDEP fully reserves all rights to condition its acceptance of any grant or assignment of any GERE upon full and complete

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satisfaction by the grantor or assignor of any requirements for implementing such grant or such assignment, respectively, that MassDEP, in its sole discretion, may deem appropriate. MassDEP shall identify such requirements upon request or at such other time as MassDEP deems appropriate. Any disputes that may arise related to MassDEP's requirements or a determination not to accept a GERE are outside the scope of and do not arise under this Consent Decree. Performing Settling Defendants shall, within 60 days after request by EPA, submit to EPA and MassDEP for review and approval with respect to such property:

(1) a fully executed GERE, in substantially the form of Appendix E hereto, that is enforceable under the laws of the Commonwealth, free and clear of all prior liens and encumbrances (except as approved by EPA and MassDEP), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 3111;

(2) a current title commitment or Certification of Title prepared in accordance with the U.S. Department of Justice Title Standards 2001 (the "Standards"); and

(3) any other documents, including but not limited to a Subordination Agreement for any prior liens and encumbrances, and a survey plan, if required by EPA pursuant to CERCLA and/or MassDEP pursuant to M. G. L. c. 21E.

d. Within 15 days of EPA's and MassDEP's approval of the GERE, title commitment or Certification of Title, and other required documents, the Performing Settling Defendants shall update the title commitment or Certification of Title and, if any additional encumbrances have been recorded since the effective date of the title commitment or Certification of Title, the GERE shall not be recorded but Performing Settling Defendants shall immediately notify EPA and MassDEP and provide a copy of each such encumbrance. If no additional encumbrances have been recorded since the effective date of the title commitment or Certification of Title, or upon receipt from EPA and MassDEP of written approval to proceed, the Performing Settling Defendants shall record and/or register the GERE, the Subordination Agreement(s), if any, and the survey plan with the Middlesex North Registry of Deeds or Land Registration Office, as applicable.

e. Within 30 days of recording and/or registering the GERE, the Subordination Agreement(s), if any, and the survey plan, the Performing Settling Defendants shall submit to EPA and MassDEP:

(1) a certified Registry copy of the GERE and Subordination Agreement(s), if any, bearing the book and page/instrument number and/or document number;

(2) a Registry copy of the required survey plan(s) referenced in the GERE, bearing the plan book/plan number; and

(3) if the property subject to the GERE is unregistered land, a Registry copy of the deed into the owner of the property, bearing the marginal reference required by 310 C.M.R. 40.1071(3)(a).

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29. For purposes of Paragraph 28, “best efforts” includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, and/or the GERE and any other restrictive easements. If any access or land/water use restriction agreements required by Paragraphs 28(a) or 28(b) are not obtained within 45 days of EPA’s request, or such longer reasonable period of time as EPA, after reasonable opportunity for review and comment by MassDEP, approves in writing, or a GERE or any other access easements or restrictive easements required by Paragraph 28(c) are not submitted to EPA in draft form within 60 days of EPA’s request, or such longer reasonable period of time as EPA, after reasonable opportunity for review and comment by MassDEP, approves in writing, Performing Settling Defendants shall promptly notify the United States and MassDEP in writing, and shall include in that notification a summary of the steps that Performing Settling Defendants have taken to attempt to comply with Paragraph 28. The United States or the Commonwealth may, as either deems appropriate, assist Performing Settling Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land. Performing Settling Defendants shall reimburse the United States and/or the Commonwealth, as appropriate, in accordance with the procedures in Section XVI (Payments for Response Costs and Natural Resource Damages), for all costs incurred, direct or indirect, by the United States or the Commonwealth in obtaining such access and/or land/water use restrictions including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

30. If EPA determines that Institutional Controls, including but not limited to land/water use restrictions in the form of State or local laws, regulations, ordinances, or other governmental controls, are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Performing Settling Defendants shall cooperate with EPA’s and/or the Commonwealth’s efforts to secure such governmental controls.

31. Notwithstanding any provision of this Consent Decree, the United States and the Commonwealth retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, Chapter 21E, Chapter 21C, and any other applicable federal or State statute or regulations.

X. REPORTING REQUIREMENTS

32. In addition to any other requirement of this Consent Decree, unless EPA and MassDEP agree in writing to fewer copies or a different transmittal method, Performing Settling Defendants shall submit six (6) copies to EPA, and two (2) printed copies and one (1) electronic copy to MassDEP of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month and all activities planned for the two months following the report; (b) include a summary of all results of sampling and tests and all other data received or generated by Performing Settling Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans

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and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next two months and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Performing Settling Defendants have proposed to EPA or that have been approved by EPA pursuant to Paragraph 14 (Modification of the SOW or Related Work Plans) or Section XI (EPA Approval of Plans and Other Submissions); and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next two months. Performing Settling Defendants shall submit these progress reports to EPA and MassDEP by the tenth day of every month following the selection of the Supervising Contractor until EPA notifies Performing Settling Defendants pursuant to Paragraph 53(b) (Completion of Work) of Section XIV (Certification of Completion), or until such time as EPA, after a reasonable opportunity for review and comment by the Commonwealth, otherwise notifies the Performing Settling Defendants in writing. If requested by EPA or the Commonwealth, Performing Settling Defendants shall also provide briefings for EPA and the Commonwealth to discuss the progress of the Work.

33. Performing Settling Defendants shall notify EPA and MassDEP of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than 7 days prior to the performance of the activity.

34. Upon the occurrence of any event during performance of the Work that Performing Settling Defendants are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11004, Performing Settling Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Planning & Response Branch, Region 1, United States Environmental Protection Agency. The Performing Settling Defendants shall orally notify the MassDEP Project Manager within 24 hours of the onset of any event for which notification to the EPA Project Coordinator is required as stated above. Performing Settling Defendants shall orally notify the MassDEP Project Manager and the EPA Project Coordinator concurrently with any report of any release or threat of a release that meets the criteria set forth in 310 C.M.R. 40.0300 (in addition to notifying the MassDEP Northeast Regional Office of Emergency Response Section in accordance with the requirements of the MCP). These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

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35. Within 20 days of the onset of such an event, as described in the preceding Paragraph, Performing Settling Defendants shall furnish to Plaintiffs a written report, signed by Performing Settling Defendants' Project Coordinator, setting forth the events that occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Performing Settling Defendants shall submit a report setting forth all actions taken in response thereto.

36. Unless EPA and MassDEP agree in writing to fewer copies or a different transmittal method, Performing Settling Defendants shall submit six (6) copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA, in accordance with the schedules set forth in such plans. Performing Settling Defendants shall simultaneously submit two (2) printed copies and one (1) electronic copy of all such plans, reports and data to MassDEP. Upon request by EPA or MassDEP, Performing Settling Defendants shall submit in electronic form all portions of any report or other deliverable Performing Settling Defendants are required to submit pursuant to the provisions of this Consent Decree.

37. All reports and other documents submitted by Performing Settling Defendants to EPA and/or MassDEP (other than the monthly progress reports referred to above) which purport to document Performing Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of Performing Settling Defendants.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

38. After review of any plan, report or other deliverable which is required to be submitted for approval pursuant to this Consent Decree, EPA, after a reasonable opportunity for review and comment by the Commonwealth, shall: (a) approve, in whole or in part, the deliverable; (b) approve the deliverable upon specified conditions; (c) modify the deliverable to cure the deficiencies; (d) disapprove, in whole or in part, the deliverable; or (e) any combination of the above. However, EPA shall not modify a deliverable without first providing Performing Settling Defendants at least one written notice of deficiency and an opportunity to cure within 7 days, or such longer time period as agreed to by EPA, except where to do so would cause serious disruption to the Work, or where the previous deliverable has been disapproved due to material defects and the deliverable under consideration continues to have the material defect previously identified by EPA.

39. In the event of approval, approval upon conditions, modification, or any combination thereof, by EPA, pursuant to Paragraph 38(a), (b), (c), or (e), Performing Settling Defendants shall proceed to take any action required by the plan, report, or other deliverable, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the deliverable to cure the deficiencies pursuant to Paragraph 38(c) and the deliverable has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

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40. Resubmission of Plans, Reports, and Other Deliverables.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 38(d), Performing Settling Defendants shall, within 7 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Any stipulated penalties applicable to the deliverable, as provided in Section XX (Stipulated Penalties), shall accrue during the 7-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 41 and 42.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 38(d), Performing Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the deliverable. Implementation of any non-deficient portion of a deliverable shall not relieve Performing Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

41. In the event that a resubmitted plan, report or other deliverable, or portion thereof, is disapproved by EPA, EPA, after a reasonable opportunity for review and comment by the Commonwealth, may again require Performing Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report, or other deliverable after a reasonable opportunity for review and comment by the Commonwealth. Performing Settling Defendants shall implement any such plan, report, or deliverable as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute Resolution).

42. If upon resubmission, a plan, report, or deliverable is disapproved or modified by EPA due to a material defect, Performing Settling Defendants shall be deemed to have failed to submit such plan, report, or deliverable timely and adequately unless Performing Settling Defendants invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial deliverable was originally required, as provided in Section XX (Stipulated Penalties).

43. All plans, reports, and other deliverables required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other deliverable required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

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XII. PROJECT COORDINATORS

44. Within 20 days of lodging this Consent Decree, Performing Settling Defendants, EPA and MassDEP will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. Performing Settling Defendants' Project Coordinator shall be subject to disapproval by EPA, after a reasonable opportunity for review and comment by the Commonwealth, and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Performing Settling Defendants' Project Coordinator shall not be an attorney for any of the Performing Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

45. Plaintiffs may designate other representatives, including, but not limited to, EPA and Commonwealth employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the NCP, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the NCP, to halt any Work required by this Consent Decree and to take any necessary response action when he or she determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to the release or threatened release of Waste Material.

46. EPA's Project Coordinator and Performing Settling Defendants' Project Coordinator will meet, at a minimum, on a monthly basis. Performing Settling Defendants' Project Coordinator shall provide MassDEP's Project Coordinator with reasonable advance notice of all such meetings. MassDEP's Project Coordinator shall have the right to fully participate in all such meetings.

XIII. PERFORMANCE GUARANTEE

47. In order to ensure the full and final completion of the Work, Performing Settling Defendants shall establish and maintain a Performance Guarantee for the benefit of EPA in the amount of \$29,980,000 (hereinafter "Estimated Cost of the Work"). The Performance Guarantee, which must be satisfactory in form and substance to EPA, shall be in one or more of the following mechanisms (provided that, if Performing Settling Defendants intend to use multiple mechanisms, such multiple mechanisms shall be limited to trust funds, surety bonds guaranteeing payment, letters of credit, insurance policies, and the financial test by a Performing Settling Defendant that is a local government or other political subdivision of the State):

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a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s): (i) that has the authority to issue letters of credit; and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;

c. A trust fund established for the benefit of EPA, which may be funded with cash and/or letters of credit, that is administered by a trustee that has the authority to act as a trustee;

d. A policy of insurance that: (i) provides EPA with acceptable rights as a beneficiary thereof; and (ii) is issued by an insurance carrier (a) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (b) whose insurance operations are regulated and examined by a State agency;

e. A demonstration by a Performing Settling Defendant that is a local government or other political subdivision of the State, that such Performing Settling Defendant satisfies the requirements in Appendix F-3;

f. A demonstration by one or more Performing Settling Defendants that each such Performing Settling Defendant meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied;

g. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of a Performing Settling Defendant; or (ii) a company that has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with at least one Performing Settling Defendant; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder; or

h. Such other form as EPA, in its sole and unreviewable discretion, may approve in writing.

Performing Settling Defendants have selected, and EPA has approved, as an initial Performance Guarantee a demonstration by the Town pursuant to the requirements of Paragraph 47(e) and Appendix F-3 to address \$6.5 million of their obligation hereunder, and two trusts pursuant to Paragraph 47(c), attached hereto as Appendices F-1 and F-2 (the Sutton Brook Disposal Area Superfund Site De Minimis Settlement Trust Agreement and the Sutton Brook Disposal Area Superfund Site Settlement Trust Agreement), to address remaining obligations under this Section. Within 10 days after the Effective Date, Performing Settling Defendants shall execute or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents

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attached hereto as Appendix F, and such Performance Guarantee(s) shall thereupon be fully effective. Within 30 days of the Effective Date, Performing Settling Defendants shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to the EPA Regional Financial Management Officer in accordance with Section XXVI (Notices and Submissions), and to the United States, EPA and MassDEP as specified in Section XXVI (Notices and Submissions).

48. If at any time during the effective period of this Consent Decree, Performing Settling Defendants provide a Performance Guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraphs 47(f) or 47(g), the relevant Performing Settling Defendants shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods, unless otherwise provided in this Consent Decree, including but not limited to: (i) the initial submission to EPA, with a copy to MassDEP, of required financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant; (ii) the annual re-submission to EPA, with a copy to MassDEP, of such reports and statements within 90 days after the close of each such entity's fiscal year; and (iii) the notification of EPA, with a copy to MassDEP, within 90 days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of the Performance Guarantee methods specified in this Section XIII, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to refer to the Work required under this Consent Decree, and the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to refer to the Estimated Cost of the Work.

49. In the event that EPA determines at any time that a Performance Guarantee provided by any Performing Settling Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that any Performing Settling Defendant becomes aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Performing Settling Defendants, within 30 days of receipt of notice of EPA's determination or, as the case may be, within 30 days of any Performing Settling Defendant becoming aware of such information, shall obtain and present to EPA for approval, with a copy to MassDEP, a proposal for a revised or alternative form of Performance Guarantee listed in Paragraph 47 that satisfies all requirements set forth in this Section XIII. In seeking approval for a revised or alternative form of Performance Guarantee, Performing Settling Defendants shall follow the procedures set forth in Paragraph 51(b)(2). Performing Settling Defendants' inability to post a Performance Guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Performing Settling Defendants to complete the Work in strict accordance with the terms hereof.

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50. The commencement of any Work Takeover pursuant to Paragraph 111 shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to Paragraphs 47(a), 47(b), 47(c), 47(d), 47(g) or 47(h), and at such time EPA shall have immediate access to resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. EPA shall also have the right to direct payment of such resources, or a portion of such resources, to MassDEP or the benefit of MassDEP for the performance of the Work, as agreed by EPA and MassDEP under appropriate circumstances. If for any reason EPA is unable to promptly secure the resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or in the event that the Performance Guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 47(e) or 47(f), Performing Settling Defendants shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA.

51. Modification of Amount and/or Form of Performance Guarantee.

a. Reduction of Amount of Performance Guarantee. If Performing Settling Defendants believe that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 47, Performing Settling Defendants may, on any anniversary of the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing, with a copy to MassDEP, to request a reduction in the amount of the Performance Guarantee provided pursuant to this Section so that the amount of the Performance Guarantee is equal to the estimated cost of the remaining Work to be performed. Performing Settling Defendants shall submit a written proposal for such reduction to EPA, with a copy to MassDEP, that shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval for a revised or alternative form of Performance Guarantee, Performing Settling Defendants shall follow the procedures set forth in Paragraph 51(b)(2). If EPA decides to accept such a proposal, EPA shall notify the petitioning Performing Settling Defendants of such decision in writing, with a copy to MassDEP. After receiving EPA's written acceptance, Performing Settling Defendants may reduce the amount of the Performance Guarantee in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, Performing Settling Defendants may reduce the amount of the Performance Guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XIX (Dispute Resolution). No change to the form or terms of any Performance Guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 49 or 51(b).

b. Change of Form of Performance Guarantee.

(1) If, after the Effective Date, Performing Settling Defendants desire to change the form or terms of any Performance Guarantee(s) provided pursuant to this Section,

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Performing Settling Defendants may, on any anniversary of the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing, with a copy to MassDEP, to request a change in the form of the Performance Guarantee provided hereunder. The submission of such proposed revised or alternative form of Performance Guarantee shall be as provided in Paragraph 51(b)(2). Any decision made by EPA on a petition submitted under this Paragraph shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Performing Settling Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

(2) Performing Settling Defendants shall submit a written proposal for a revised or alternative form of Performance Guarantee to EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of Performance Guarantee, including all proposed instruments or other documents required in order to make the proposed Performance Guarantee legally binding. The proposed revised or alternative form of Performance Guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Performing Settling Defendants shall submit such proposed revised or alternative form of Performance Guarantee to the EPA Regional Financial Management Officer in accordance with Section XXVI (Notices and Submissions). EPA shall notify Performing Settling Defendants in writing, with a copy to MassDEP, of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this Paragraph. Within 10 days after receiving a written decision approving the proposed revised or alternative Performance Guarantee, Performing Settling Defendants shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such Performance Guarantee(s) shall thereupon be fully effective. Performing Settling Defendants shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to the EPA Regional Financial Management Officer within 30 days of receiving a written decision approving the proposed revised or alternative Performance Guarantee in accordance with Section XXVI (Notices and Submissions) and to the United States, EPA and MassDEP as specified in Section XXVI (Notices and Submissions).

c. Release of Performance Guarantee. If Performing Settling Defendants receive written notice from EPA in accordance with Paragraph 53 that the Work has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies Performing Settling Defendants in writing, with a copy to MassDEP, Performing Settling Defendants may thereafter release, cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section. Performing Settling Defendants shall not release, cancel, or discontinue any Performance Guarantee provided pursuant to this Section except as provided in this Paragraph. In the event of a dispute, Performing Settling Defendants may release, cancel, or discontinue the Performance Guarantee(s) required hereunder only in accordance with a final

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administrative or judicial decision resolving such dispute pursuant to Section XIX (Dispute Resolution).

XIV. CERTIFICATION OF COMPLETION

52. Completion of the Remedial Action.

a. Within 90 days after Performing Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Performing Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Performing Settling Defendants, EPA, and MassDEP. If, after the pre-certification inspection, Performing Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to MassDEP, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, a registered professional engineer and Performing Settling Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer registered in the Commonwealth. The report shall contain the following statement, signed by a responsible corporate official of a Performing Settling Defendant or Performing Settling Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity for review and comment by the Commonwealth, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA, after a reasonable opportunity for review and comment by the Commonwealth, will notify Performing Settling Defendants in writing, with a copy to MassDEP, of the activities that must be undertaken by Performing Settling Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards, provided, however, that EPA may only require Performing Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14(b). EPA, after a reasonable opportunity for review and comment by the Commonwealth, will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require Performing Settling Defendants to submit a schedule to EPA, with a copy to MassDEP, for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Performing Settling Defendants shall perform all activities described in the notice in accordance with the

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specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion of the Remedial Action and after a reasonable opportunity for review and comment by the Commonwealth, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Performing Settling Defendants, with a copy to MassDEP. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Remedial Action shall not affect Performing Settling Defendants' obligations under this Consent Decree.

53. Completion of the Work.

a. Within 90 days after Performing Settling Defendants conclude that all phases of the Work (including O & M, but not including any obligations under Section VII (Remedy Review) that arise after completion of the O & M), have been fully performed, Performing Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Performing Settling Defendants, EPA and MassDEP. If, after the pre-certification inspection, Performing Settling Defendants still believe that the Work has been fully performed, Performing Settling Defendants shall submit to EPA, with a copy to the Commonwealth, a written report by a professional engineer registered in the Commonwealth stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Performing Settling Defendant or Performing Settling Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, EPA, after reasonable opportunity for review and comment by the Commonwealth, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA, after reasonable opportunity for review and comment by the Commonwealth, will notify Performing Settling Defendants in writing, with a copy to MassDEP, of the activities that must be undertaken by Performing Settling Defendants pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require Performing Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14(b). EPA, after a reasonable opportunity for review and comment by the Commonwealth, will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require Performing Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Performing Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein,

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subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion of the Work by Performing Settling Defendants and after a reasonable opportunity for review and comment by the Commonwealth, that the Work has been performed in accordance with this Consent Decree, EPA will so notify Performing Settling Defendants in writing.

XV. EMERGENCY RESPONSE

54. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Performing Settling Defendants shall, subject to Paragraph 55, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, Performing Settling Defendants shall notify the EPA Emergency Planning & Response Branch, Region 1. In such an event, Performing Settling Defendants shall also immediately notify MassDEP's Project Coordinator, or if the MassDEP's Project Coordinator is unavailable, MassDEP's Alternate Project Coordinator, and the MassDEP Northeast Regional Office of the Emergency Response Section. Such notification is in addition to any other notification requirements under M. G. L. c. 21E and the MCP. Performing Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans and any other applicable plans or documents developed pursuant to the SOW. In the event that Performing Settling Defendants fail to take appropriate response action as required by this Section, and EPA, or as appropriate the Commonwealth, take such action instead, Performing Settling Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP and shall reimburse the Commonwealth all costs of the response action not inconsistent with the NCP or the MCP, pursuant to Section XVI (Payments for Response Costs and Natural Resource Damages).

55. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States or the Commonwealth: a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants Not to Sue by Plaintiffs).

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XVI. PAYMENTS FOR RESPONSE COSTS AND NATURAL RESOURCE DAMAGES

56. Payments by the Town. As part of its obligations under the Consent Decree, the Town shall contribute to the Trust as specified in Appendix D-4 to this Consent Decree. To the extent that Appendix D-4 permits any in-kind contribution that is within the definition of Work, its inclusion in Appendix D-4 does not excuse any Performing Settling Defendant's joint and several liability to perform such part of the Work.

57. Payments by Cashout Settling Defendants. Within 30 days of the Effective Date, each Cashout Settling Defendant shall pay or cause to be paid to the Trust the amount specified for that Cashout Settling Defendant in Appendix D-2 to this Consent Decree. Each Cashout Settling Defendant's full settlement amount shall be deposited into the Trust by Electronic Funds Transfer in accordance with instructions provided by Performing Settling Defendants after the Effective Date. At the time of payment into the Trust, each Cashout Settling Defendant shall send or cause to be sent, to the United States and to the Commonwealth, notice evidencing that payment has been made into the Trust in accordance with Section XXVI (Notices and Submissions). The funds contributed to the Trust by or for the Cashout Settling Defendants pursuant to this Paragraph shall be used by Performing Settling Defendants to fund the Work. A portion of the funds contributed to the Trust by the Cashout Settling Defendants pursuant to this Paragraph may also be used by Performing Settling Defendants to make their payments for Oversight Costs, United States Future Response Costs, State Past Response Costs, State Future Response Costs and Natural Resource Damages.

58. Payments by De Minimis Settling Defendants. EPA has determined the following:

a. prompt settlement with each De Minimis Settling Defendant is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1);

b. the payment to be made by each De Minimis Settling Defendant under this Consent Decree involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1); and

c. the amount of hazardous substances contributed to the Site by each De Minimis Settling Defendant and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each De Minimis Settling Defendant are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A). Each De Minimis Settling Defendant contributed wastes in amounts not exceeding 3% of the total volume of similar wastes contributed by Settling Defendants to the Site, and the hazardous substances contributed by each De Minimis Settling Defendant to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

Within 30 days of the Effective Date, each De Minimis Settling Defendant shall pay or cause to be paid to the De Minimis Trust the amount specified for that De Minimis Settling Defendant in Appendix D-3 to this Consent Decree. Each De Minimis Settling Defendant's full settlement amount shall be deposited into the De Minimis Trust by Electronic Funds Transfer in accordance

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with instructions provided by Performing Settling Defendants after the Effective Date. At the time of payment into the De Minimis Trust, each De Minimis Settling Defendant shall send or cause to be sent, to the United States and to the Commonwealth, notice evidencing that payment has been made in accordance with Section XXVI (Notices and Submissions). The funds contributed to the De Minimis Trust by the De Minimis Settling Defendants pursuant to this Paragraph shall be used by Performing Settling Defendants to fund the Work. A portion of the funds contributed to the De Minimis Trust by or for the De Minimis Settling Defendants pursuant to this Paragraph may also be used by Performing Settling Defendants to make their payments for Oversight Costs, United States Future Response Costs, State Past Response Costs, State Future Response Costs and Natural Resource Damages.

59. Payment by Performing Settling Defendants for Natural Resource Damages. Within 30 days of the Effective Date, Performing Settling Defendants shall pay \$1,650,000 to the NR Trustees for Natural Resource Damages as follows:

a. Within 30 days of the Effective Date, Performing Settling Defendants shall pay, in the manner set forth in Subparagraphs 59(b) and 59(c), a total of \$825,000 as a one time payment, plus Interest, if any, as provided in Paragraph 66, to the NR Trustees to reimburse costs incurred and to be incurred by the NR Trustees in assessing the damages to natural resources at the Site and to plan and implement projects to restore, replace, or acquire the equivalent of natural resources injured by the release of hazardous substances at or from the Site.

b. Within 30 days of the Effective Date, Performing Settling Defendants shall pay \$62,752 to DOI plus Interest if any as provided in Paragraph 66, to DOI as reimbursement of DOI's Costs of Assessment. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing the civil action number and DOJ Case Number 90-11-2-07854/2, and NRDAR Account Number 14X5198. Payment shall be made in accordance with instructions provided to the Performing Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of Massachusetts. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Performing Settling Defendants shall send notice that such payment has been made to the persons listed in Section XXVI (Notices and Submissions) for notice to the United States, and to Bruce Nesslage, Natural Resource Damage Assessment and Restoration Program, 1849 C Street, NW, Mailstop 4449, Washington, D.C. 20240. The notice shall state that the payment is for reimbursement of Costs of Assessment for natural resource damage assessment with respect to the Sutton Brook Disposal Area Superfund Site in Massachusetts, and include the DOJ Case Number 90-11-2-07854/2, and the names of the Performing Settling Defendants making the payment.

c. Within 30 days of the Effective Date, Performing Settling Defendants shall pay \$762,248, plus Interest if any as provided in Paragraph 66, to DOI, on behalf of the NR Trustees, for Natural Resource Damages. Payment shall be made using the U.S. Treasury's Remittance Express program, or, in the event said program is not available to Performing Settling Defendants, then by Fedwire EFT in accordance with instructions provided to the Performing Settling Defendants by the Department of the Interior. Any payments received after 4:00 P.M. (Eastern Time) will be credited on the next business day. Performing Settling

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Defendants shall send notice that such payment has been made to the persons listed in Section XXVI (Notices and Submissions) for notice to the United States, and to Bruce Nesslage, Natural Resource Damage Assessment and Restoration Program, 1849 C Street, NW, Mailstop 4449, Washington, D.C. 20240. The notice shall state that the payment is for Natural Resource Damages under the trusteeship of DOI and EEA with respect to the Sutton Brook Disposal Area Superfund Site in Massachusetts, and include the DOJ Case Number 90-11-2-07854/2, reference Account Number 14X5198 (NRDAR), and the names of the Performing Settling Defendants making the payment.

d. The jurisdiction, trusteeships, and restoration goals of DOI and EEA as NR Trustees over the injured natural resources overlap. Accordingly, the monies paid pursuant to Subparagraph 59(c) shall be held by DOI in its Natural Resource Damage Assessment and Restoration Fund, and said monies shall only be spent for restoration, including restoration planning, oversight, monitoring, and other allowable expenditures associated with natural resource injuries associated with the Site.

e. All expenditures, disbursements, or other dispositions of the monies received as payments pursuant to Subparagraph 59(c) together with all Interest accrued thereon, if any, shall be expended pursuant to the terms of the Memorandum of Agreement ("MOA") to be entered into among DOI, and EEA, which MOA will require decisions by the Trustees to be unanimous.

f. Within 30 days of the Effective Date of this Consent Decree, Performing Settling Defendants shall pay \$825,000 by certified check payable to the Commonwealth of Massachusetts, with a reference to Natural Resource Damages Trust - Account 2000-6020, for Natural Resource Damages relating to contaminated groundwater related to the Site as alleged in the State's complaint. Payment shall be sent to:

Executive Office of Energy and Environmental Affairs
Attn: Chief Financial Officer
100 Cambridge Street, Suite 900
Boston, MA 02114

Copies of the check shall be sent to:

MA Executive Office of Energy and Environmental Affairs
NRD Program
100 Cambridge Street
Suite 900
Boston, MA 02114 (Attn: Dale Young)

Office of the Attorney General
Environmental Protection Division
One Ashburton Place
Boston, MA 02108 (Attn: Matthew Brock)

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The payment under this Subparagraph shall be allocated as follows:

\$44,270.35 of the amount paid to the Commonwealth to be deposited into the Natural Resource Damages Trust - Account 2000-6020 on account of NRD assessment costs incurred by the Commonwealth in connection with the Site. This payment shall be deposited into this account and expended by the Commonwealth Trustee in accordance with its requirements as established under 1998 Mass. Acts ch. 194, sec. 317, as amended by 2004 Mass. Acts ch. 149, sec. 222.

\$780,729.65 of the amount paid to the Commonwealth to be deposited into the Natural Resource Damages Trust - Account 2000-6020, and shall be managed by the Commonwealth Trustee and used for restoration, replacement, or acquisition of the equivalent of injured natural resources in connection with the Site in accordance with Chapter 21E and the requirements as established under 1998 Mass Acts ch. 194, sec. 317, as amended by 2004 Mass. Acts ch. 149, sec. 222.

60. Payments by Performing Settling Defendants for State Past Response Costs.

Within 30 days of the Effective Date, Performing Settling Defendants shall pay to the Commonwealth Five Hundred Twelve Thousand Dollars (\$512,000) in reimbursement of the State Past Response Costs in the form of a certified or cashier's check or checks made payable to the "Commonwealth of Massachusetts" and referencing Sutton Brook Disposal Area Superfund Site. Performing Settling Defendants shall deliver such certified or cashier's check(s) to the attention of: Chief, Environmental Protection Division, Office of the Attorney General, One Ashburton Place, Room 1813, Boston, MA 02108. Performing Settling Defendants shall also send copies of such check(s) and transmittal letter to Mark Collins, Branch Chief, Cost Recovery, Fees and Revenue Section, Bureau of Waste Site Cleanup, Department of Environmental Protection, One Winter Street, Boston, MA 02108, and to the Commonwealth as specified in Section XXVI (Notices and Submissions).

61. Payments by Performing Settling Defendants for United States Future Response Costs.

a. Performing Settling Defendants shall pay to EPA all United States Future Response Costs not inconsistent with the NCP. On a periodic basis, the United States will send Performing Settling Defendants a bill requiring payment that includes an itemized cost summary. The itemized cost summary will distinguish between United States Future Response Costs and Oversight Costs. Performing Settling Defendants shall make all payments within 30 days of Performing Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 65, in accordance with Paragraphs 64(a) and 64(b) (Payment Instructions).

b. The total amount to be paid by Performing Settling Defendants pursuant to Paragraph 61(a) shall be deposited by EPA in the Sutton Brook Disposal Area Superfund Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

62. Payments by Performing Settling Defendants for State Future Response Costs. Performing Settling Defendants shall pay to the Commonwealth all State Future Response Costs not inconsistent with the NCP or MCP. On a periodic basis the Commonwealth will send to the

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Performing Settling Defendants a bill requiring payment of such State Future Response Costs, which includes an itemized cost summary. The itemized cost summary will distinguish between State Future Response Costs and Oversight Costs. The Performing Settling Defendants shall make all payments within 30 days of the Performing Settling Defendants' receipt of each bill for State Future Response Costs, except as otherwise provided in Paragraph 65. The Performing Settling Defendants shall make all payments to the Commonwealth required by this Paragraph in the manner described in Paragraph 60.

63. Payments by Performing Settling Defendants for Oversight Costs. Performing Settling Defendants shall pay Oversight Costs, with respect to the United States not inconsistent with the NCP, and with respect to the Commonwealth not inconsistent with the NCP or the MCP, to the United States and the Commonwealth in a combined total amount that does not exceed the greater of: (1) \$4,500,000 (plus an additional \$1,050,000 if EPA determines that implementation of the Contingent Remedy is necessary, pursuant to Section 7.12 of the SOW), or (2) 15% of the total costs that Performing Settling Defendants incur in performing the Work. On a periodic basis, the United States and the Commonwealth will each send Performing Settling Defendants a bill requiring payment of their respective Oversight Costs that includes an itemized cost summary. The itemized cost summary will distinguish between United States Future Response Costs, State Future Response Costs and Oversight Costs. Performing Settling Defendants shall make all payments within 30 days of Performing Settling Defendants' receipt of each bill, except as otherwise provided in Paragraph 65, in accordance with Paragraphs 64(a) and 64(b), or in the manner described in Paragraph 60, as appropriate.

64. Payment Instructions for United States Future Response Costs and Oversight Costs.

a. All payments required to be made in accordance with this Paragraph shall be made by official bank checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Number 01-6U, and DOJ Case Number 90-11-2-07854/1. Performing Settling Defendants shall send the check(s) to:

(For Delivery by First Class Mail)

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

(For Delivery by Overnight Mail)

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

In the alternative, Performing Settling Defendants may make the payments required by this Paragraph through a wire transfer. Wire transfers shall reference the name and address of the

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party making the payment, EPA Site/Spill ID Number 01-6U and DOJ Case Number 90-11-2-07854/1, and shall be directed to:

Federal Reserve Bank of New York
 33 Liberty Street
 New York, NY 10045
 ABA = 021030004
 Account = 68010727
 Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

b. At the time of any payment required to be made in accordance with Paragraph 64, Performing Settling Defendants shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions), and to the EPA Cincinnati Finance Office by mail at 26 Martin Luther King Drive, Cincinnati, Ohio 45268.

65. Performing Settling Defendants may contest any Oversight Costs, United States Future Response Costs or State Future Response Costs billed under Paragraphs 61, 62 or 63 if they determine that the United States or the Commonwealth has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP, or in the case of the Commonwealth, inconsistent with both the NCP and the MCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or the Commonwealth (if the Commonwealth's accounting is being disputed) pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Oversight Costs, United States Future Response Costs or State Future Response Costs and the basis for objection. In the event of an objection, Performing Settling Defendants shall within the 30-day period (i) pay to the United States all uncontested Oversight Costs billed by the United States and all uncontested United States Future Response Costs and (ii) pay to the Commonwealth all uncontested Oversight Costs billed by the Commonwealth and all uncontested State Future Response Costs; each in the manner described in Paragraph 61, 62 or 63, as appropriate. Simultaneously, Performing Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the Commonwealth and remit to that escrow account funds equivalent to the amount of the contested Oversight Costs, United States Future Response Costs or State Future Response Costs. Performing Settling Defendants shall send to the United States and the Commonwealth, as provided in Section XXVI (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Oversight Costs, United States Future Response Costs or State Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Performing Settling Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States or the Commonwealth prevails in the dispute, within 5 days of the resolution of the dispute, Performing Settling Defendants shall pay the sums due (with accrued interest) to

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the United States, or to the Commonwealth, if the Commonwealth's costs are disputed, in the manner described in Paragraph 61, 62 or 63. If Performing Settling Defendants prevail concerning any aspect of the contested costs, Performing Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States, or to the Commonwealth, if the Commonwealth's costs are disputed, in the manner described in Paragraph 61, 62 or 63. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Performing Settling Defendants' obligation to reimburse the United States or the Commonwealth for Oversight Costs, United States Future Response Costs and State Future Response Costs.

66. In the event that any payment for Oversight Costs, United States Future Response Costs, State Past Response Costs, State Future Response Costs or Natural Resource Damages required under this Section is not made by the date required, Performing Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid on Natural Resource Damages and State Past Response Costs shall begin to accrue on the Effective Date. The Interest on all Oversight Costs, United States Future Response Costs and State Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Performing Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Performing Settling Defendants' failure to make timely payments under this Section, including, but not limited to, payment of stipulated penalties.

67. If any De Minimis Settling Defendant fails to make its full payment within the time required by Paragraph 58, or such other schedule approved in writing by EPA and the Commonwealth, that De Minimis Settling Defendant shall pay Interest on the unpaid balance. In addition, if any De Minimis Settling Defendant fails to make full payment as required by Paragraph 58, the United States or the Commonwealth may, in addition to any other available remedies or sanctions, bring an action against that De Minimis Settling Defendant seeking injunctive relief to compel payment and/or, for the United States, seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), for failure to make timely payment.

68. If any Cashout Settling Defendant fails to make its full payment within the time required by Paragraph 57, or such other schedule approved in writing by EPA and the Commonwealth, that Cashout Settling Defendant shall pay Interest on the unpaid balance. In addition, if any Cashout Settling Defendant fails to make full payment as required by Paragraph 57, the United States or the Commonwealth may, in addition to any other available remedies or sanctions, bring an action against that Cashout Settling Defendant seeking injunctive relief to compel payment and/or, for the United States, seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), for failure to make timely payment.

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XVII. INDEMNIFICATION AND INSURANCE**69. Performing Settling Defendants' Indemnification of the United States and the Commonwealth.**

a. The United States and the Commonwealth do not assume any liability by entering into this Consent Decree or by virtue of any designation of Performing Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Performing Settling Defendants shall indemnify, save and hold harmless the United States and the Commonwealth and their respective officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Performing Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Performing Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, Performing Settling Defendants agree to pay the United States and the Commonwealth all costs they incur, including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the Commonwealth based on negligent or other wrongful acts or omissions of Performing Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the Commonwealth shall be held out as a party to any contract entered into by or on behalf of Performing Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither Performing Settling Defendants nor any such contractor shall be considered an agent of the United States or the Commonwealth.

b. The United States and the Commonwealth shall give Performing Settling Defendants notice of any claim for which the United States or the Commonwealth plans to seek indemnification pursuant to this Paragraph, and shall consult with Performing Settling Defendants prior to settling such claim.

70. Performing Settling Defendants waive all claims against the United States and the Commonwealth for damages or reimbursement or for set-off of any payments made or to be made to the United States and the Commonwealth, arising from or on account of any contract, agreement, or arrangement between any one or more of Performing Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Performing Settling Defendants shall indemnify and hold harmless the United States and the Commonwealth with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Performing Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

71. No later than 30 days before commencing any on-site Work, Performing Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of

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Completion of the Remedial Action pursuant to Paragraph 52(b) of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of three million dollars, combined single limit, and automobile liability insurance with limits of three million dollars, combined single limit, naming the United States and the Commonwealth as additional insureds. In addition, for the duration of this Consent Decree, Performing Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Performing Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Performing Settling Defendants shall provide to EPA and MassDEP certificates of such insurance and a copy of each insurance policy. Performing Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Performing Settling Defendants demonstrate by evidence satisfactory to EPA and MassDEP that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Performing Settling Defendants need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

72. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Performing Settling Defendants, of any entity controlled by Performing Settling Defendants, or of Performing Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Performing Settling Defendants' best efforts to fulfill the obligation. The requirement that Performing Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

73. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Performing Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation and Restoration, EPA Region 1, within 24 hours of when Performing Settling Defendants first knew that the event might cause a delay. For any event for which notification to the EPA Project Manager is required, as stated above, Performing Settling Defendants shall also orally notify the MassDEP Project Manager within 24 hours of when Performing Settling Defendants first knew that such event might cause a delay. Within 7 days thereafter, Performing Settling Defendants shall provide in writing to EPA and MassDEP an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Performing Settling Defendants' rationale for

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attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of Performing Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Performing Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Performing Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Performing Settling Defendants shall be deemed to know of any circumstance of which Performing Settling Defendants, any entity controlled by Performing Settling Defendants, or Performing Settling Defendants' contractors knew or should have known.

74. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by the Commonwealth, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Performing Settling Defendants in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, agrees that the delay is attributable to a force majeure event, EPA will notify Performing Settling Defendants in writing, with a copy to MassDEP, of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

75. If Performing Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Performing Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Performing Settling Defendants complied with the requirements of Paragraphs 72 and 73. If Performing Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Performing Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

76. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between EPA and the Settling Defendants or the Commonwealth and Settling Defendants arising under or with respect to this Consent Decree. The procedures for resolution of disputes which involve EPA are governed by Paragraphs 77 through 81. The Commonwealth may participate in such dispute resolution proceedings to the extent specified in Paragraphs 77 through 81.

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Disputes exclusively between the Commonwealth and Settling Defendants are governed by this Paragraph and Paragraph 82. However, the procedures set forth in this Section shall not apply to actions by the United States or the Commonwealth to enforce obligations of Settling Defendants that have not been disputed in accordance with this Section.

77. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. The parties shall concurrently provide a copy of any Notice of Dispute to the Commonwealth.

78. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA, after a reasonable opportunity for review and comment by the Commonwealth, shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States and the Commonwealth a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Settling Defendants. The Statement of Position shall specify Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 79 or Paragraph 80.

b. Within 21 days after receipt of Settling Defendants' Statement of Position, EPA, after a reasonable opportunity for review and comment by the Commonwealth, will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. The Commonwealth, after reasonable opportunity for review and comment by EPA, may also serve a Statement of Position within the 21-day time limit set forth above in this Paragraph and shall provide the Settling Defendants with a copy of its Statement. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 79 or 80. Within 14 days after receipt of EPA's Statement of Position and within 14 days after receipt of any Statement of Position submitted by the Commonwealth, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and Settling Defendants as to whether dispute resolution should proceed under Paragraph 79 or 80, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 79 and 80.

79. Record Review. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the

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adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by Settling Defendants, EPA or the Commonwealth.

b. The Director of the Office of Site Remediation and Restoration, EPA Region 1, after a reasonable opportunity for review and comment by the Commonwealth, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 79(a). This decision shall be binding upon Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraphs 79(c) and 79(d).

c. Any administrative decision made by EPA pursuant to Paragraph 79(b) shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Office of Site Remediation and Restoration Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 79(a).

80. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 78, after a reasonable opportunity for review and comment by the Commonwealth, the Office of Site Remediation and Restoration Director, EPA Region 1, will issue a final decision resolving the dispute. The Office of Site Remediation and Restoration Director's decision shall be binding on Settling Defendants unless, within 10 days of receipt of the decision, Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Notwithstanding Paragraph P of Section I (Background), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

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81. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Settling Defendants under this Consent Decree, not directly in dispute, unless EPA, after a reasonable opportunity for review and comment by the Commonwealth, or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 88. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

82. Disputes Solely Between the Commonwealth and Settling Defendants. Disputes arising under the Consent Decree between the Commonwealth and Settling Defendants that relate to: (1) the amount and/or payment of Oversight Costs, State Past Response Costs or State Future Response Costs owed to the Commonwealth, (2) assessment of stipulated penalties by the Commonwealth, (3) the adequacy of and/or compliance with access and Institutional Controls in which MassDEP holds a real property interest, or (4) the adequacy of and/or compliance with the inspection and monitoring requirements established pursuant to the SOW relative to any Institutional Controls in which the MassDEP holds a real property interest, shall be governed in the following manner. The procedures for resolving the disputes mentioned in this Paragraph shall be the same as provided for in Paragraphs 77 through 81, except that each reference to EPA shall read as a reference to MassDEP, each reference to the Director of the Office of Site Remediation & Restoration, EPA Region 1, shall be read as a reference to the Assistant Commissioner for the Bureau of Waste Site Cleanup of the MassDEP, and each reference to the United States shall be read as a reference to the Commonwealth.

XX. STIPULATED PENALTIES

83. Settling Defendants' Liability for Stipulated Penalties. The Performing Settling Defendants, and each Cashout Settling Defendant or De Minimis Settling Defendant, as appropriate, shall be liable for stipulated penalties in the amounts set forth in Paragraphs 85, 86, and 87 to the United States and the Commonwealth for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by Performing Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA, and any plans or other documents approved by MassDEP in the case of any Institutional Controls for which MassDEP is a grantee of a real property interest, pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

84. a. Except as provided in Subparagraph 84(b), the Performing Settling Defendants, and each Cashout Settling Defendant or De Minimis Settling Defendant, as appropriate, shall pay 90% of stipulated penalties to the United States and shall pay 10% of stipulated penalties to the Commonwealth. However, except as provided in Subparagraph 84(b), when stipulated penalties are assessed by EPA for noncompliance with Institutional Controls requirements under the Remedial Design and/or the Remedial Action in the SOW, the

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Performing Settling Defendants shall pay 50% of stipulated penalties to the Commonwealth and 50% of stipulated penalties to the United States.

b. Performing Settling Defendants, and each Cashout Settling Defendant and each De Minimis Settling Defendant, as appropriate, shall pay 90% of stipulated penalties to the Commonwealth and 10% of stipulated penalties to the United States when MassDEP has assessed stipulated penalties for failure to make the payments required by Section XVI (Payments for Response Costs and Natural Resource Damages), as set forth in Paragraph 89(a), or when MassDEP has assessed stipulated penalties for one of the six reasons set forth in Paragraph 89(b). With respect to the assessment of stipulated penalties for failure to make payments for Natural Resource Damages, Performing Settling Defendants shall pay 50% of stipulated penalties to United States and 50% of stipulated penalties to the Commonwealth for failure to make payments required by Paragraph 59(a), and 100% of stipulated penalties to the Commonwealth for failure to make payments required by Paragraph 59(f).

85. Stipulated Penalty Amounts - Failure to Pay Response Costs; Natural Resource Damages; Work.

a. The following stipulated penalties shall be payable per violation per day for any noncompliance except those identified in Paragraphs 86 and 87:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 2,500	1st through 14th day
\$ 5,000	15th through 30th day
\$ 10,000	31st day and beyond

86. Stipulated Penalty Amounts - Reports.

a. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Sections X (Reporting Requirements) and XI (EPA Approval of Plans and Other Submissions):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1st through 14th day
\$ 1000	15th through 30th day
\$ 2500	31st day and beyond

87. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 111 (Work Takeover) of Section XXI (Covenants Not to Sue by Plaintiffs), Performing Settling Defendants shall be liable for a stipulated penalty in the following amounts:

a. Performing Settling Defendants shall pay a stipulated penalty of \$1,000,000 if EPA assumes performance of a portion or all of the Work prior to Performing Settling Defendants' completion of the construction of the landfill caps for the Northern and Southern Lobes;

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b. Performing Settling Defendants shall pay a stipulated penalty of \$500,000 if EPA assumes performance of a portion or all of the Work after Performing Settling Defendants' completion of the construction of the landfill caps for the Northern and Southern Lobes.

88. All stipulated penalties under this Section shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Performing Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Office of Site Remediation and Restoration, EPA Region 1, under Paragraph 79(b) or 80(a) of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Performing Settling Defendants' reply to EPA's, or as the case may be, MassDEP's, Statement of Position is received until the date that the Director or Assistant Commissioner issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

89. a. Following EPA's or the Commonwealth's determination, after a reasonable opportunity for review and comment by the other agency, that the Performing Settling Defendants, or with respect to any individual payment obligation, any Cashout Settling Defendant or any De Minimis Settling Defendant, as appropriate, have failed to make the payments required by Section XVI (Payments for Response Costs and Natural Resource Damages), EPA or the Commonwealth may give the Performing Settling Defendants, or such Cashout Settling Defendant or De Minimis Settling Defendant, written notification of the same and describe the noncompliance. EPA or the Commonwealth may send the Performing Settling Defendants, or such Cashout Settling Defendant or De Minimis Settling Defendant, a written demand for payment of the penalties. Following DOI's or EEA's determination that the Performing Settling Defendants have failed to make the payments required by Paragraph 59, DOI or EEA may give the Performing Settling Defendants written notification of the same and describe the noncompliance, and DOI or EEA may send the Performing Settling Defendants a written demand for payment of the penalties. However, penalties shall accrue as provided in Paragraph 85 regardless of whether EPA or the Commonwealth has notified Performing Settling Defendants, or such Cashout Settling Defendant or De Minimis Settling Defendant, of a violation.

b. Following EPA's determination, after a reasonable opportunity for review and comment by the Commonwealth, that the Performing Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give the Performing Settling Defendants written notification of the same and describe the noncompliance. Following MassDEP's determination that the Performing Settling Defendants have: (1) failed to pay

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Oversight Costs, State Past Response Costs or State Future Response Costs to the Commonwealth as required by Section XVI (Payments for Response Costs and Natural Resource Damages), (2) failed to provide the Commonwealth or MassDEP with any written or oral notice in accordance with the requirements of this Consent Decree, (3) failed to provide the Commonwealth or MassDEP any report or other document in accordance with the requirements of this Consent Decree, (4) failed to comply with the access requirements established pursuant to this Consent Decree, (5) failed to comply with the terms of any Institutional Controls established pursuant to this Consent Decree for which MassDEP, at the time of such violation, is the holder of any real property interest therein, or (6) fails to perform the inspection and monitoring requirements established pursuant to the SOW relative to any Institutional Controls in which MassDEP holds a real property interest, MassDEP may give the Performing Settling Defendants written notification of the same and describe the noncompliance. EPA, or the Commonwealth for the items set forth in this Paragraph only, may send the Performing Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in Paragraph 88 regardless of whether EPA, or the Commonwealth for the items set forth in this Paragraph, has notified the Performing Settling Defendants of a violation.

90. All penalties accruing to the United States and/or the Commonwealth under this Section shall be due and payable to the United States and/or the Commonwealth within 30 days of receipt by Performing Settling Defendants, a Cashout Settling Defendant or a De Minimis Settling Defendant, as appropriate, of a demand from EPA, DOI, MassDEP, or EEA (as set forth in Paragraph 89) for payment of the penalties, unless the recipient(s) invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall indicate that the payment is for stipulated penalties, and shall be made in accordance with Paragraph 64(a) and 64(b) (Payment Instructions), except as provided in Paragraph 59 for payment of Natural Resource Damages. All payments to the Commonwealth shall be paid by certified or cashier's check(s) made payable to the Commonwealth of Massachusetts, shall reference the Sutton Brook Disposal Area Superfund Site, MassDEP Site # 3-003893, and shall be mailed to Chief, Environmental Protection Division, Office of the Attorney General, One Ashburton Place, Room 1813, Boston, MA 02108, except as provided in Paragraph 59 for payment of Natural Resource Damages. Such Settling Defendant(s) shall also send copies of such check(s) and transmittal letter to Mark Collins, Branch Chief, Cost Recovery, Fees and Revenue Section, Bureau of Waste Site Cleanup, Department of Environmental Protection, One Winter Street, Boston, MA 02108. Such Settling Defendant(s) shall also send copies of any check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), to the United States and to the Commonwealth as provided in Section XXVI (Notices and Submissions).

91. The payment of penalties shall not alter in any way Performing Settling Defendants' obligation to complete the performance of the Work or each Cashout Settling Defendant's, each De Minimis Settling Defendant's, or the Performing Settling Defendants' obligation to make payments under this Consent Decree.

92. Penalties shall continue to accrue as provided in Paragraph 88 during any dispute resolution period, but need not be paid until the following:

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a. If the dispute is resolved by agreement or by a decision of EPA or the Commonwealth that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA and/or the Commonwealth within 15 days of the agreement or the receipt of EPA's or the Commonwealth's decision or order;

b. If the dispute is appealed to this Court and the United States or the Commonwealth prevails in whole or in part, the appropriate Settling Defendant(s) shall pay all accrued penalties determined by the Court to be owed to EPA and/or the Commonwealth within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below; and

c. If the District Court's decision is appealed by any Party, the appropriate Settling Defendant(s) shall pay all accrued penalties determined by the District Court to be owing to the United States or the Commonwealth into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA and/or the Commonwealth or to the appropriate Settling Defendant(s) to the extent that they prevail.

93. If the appropriate Settling Defendant(s) fail to pay stipulated penalties when due, the United States or the Commonwealth may institute proceedings to collect the penalties, as well as Interest. The appropriate Settling Defendant(s) shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand.

94. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the Commonwealth to seek any other remedies or sanctions available by virtue of the Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, M. G. L. c. 21E, and M. G. L. c. 21A; provided, however, that the United States and the Commonwealth shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided in this Consent Decree, except in the case of a willful violation of the Consent Decree.

95. Notwithstanding any other provision of this Section, the United States, and the Commonwealth for penalties owed only to the Commonwealth, may, in their unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXI. COVENANTS NOT TO SUE BY PLAINTIFFS

96. United States' Covenants Not to Sue Performing Settling Defendants and Cashout Settling Defendants. In consideration of the actions that will be performed by Performing Settling Defendants and the payments that will be made by Performing Settling Defendants and each Cashout Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 99 (Pre-Certification Reservations), 100 (Post-Certification Reservations), 108 (Reservations Regarding Natural Resource Damages) and 109 (General Reservations) of this Section, the United States covenants not to sue or to take administrative action against Performing Settling Defendants and each Cashout Settling Defendant pursuant to

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Sections 106 and 107(a) of CERCLA relating to the Site, including with respect to Natural Resource Damages. Except with respect to future liability, these covenants not to sue or take administrative action for Performing Settling Defendants shall take effect on the Effective Date. Except with respect to future liability, these covenants not to sue or take administrative action for each Cashout Settling Defendant shall take effect upon the later of the Effective Date or its full payment pursuant to Paragraph 57 (Payment by Cashout Settling Defendants). With respect to future liability, these covenants not to sue or take administrative action shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 52(b) of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Performing Settling Defendants and each Cashout Settling Defendant of their obligations under this Consent Decree. These covenants not to sue extend only to Performing Settling Defendants and each Cashout Settling Defendant and do not extend to any other person.

97. United States' Covenant Not to Sue De Minimis Settling Defendants. In consideration of the payments that will be made by each De Minimis Settling Defendant under the terms of this Consent Decree, and except as specifically provided by Paragraphs 98 (De Minimis Reservation) and 110 (General Reservations of Rights), the United States covenants not to sue or take administrative action against any of the De Minimis Settling Defendants pursuant to Section 106 or 107 of CERCLA, 42 U.S.C. § 9606 or 9607, relating to the Site including with respect to Natural Resource Damages. With respect to present and future liability, this covenant not to sue shall take effect for each De Minimis Settling Defendant upon the later of the Effective Date or that De Minimis Settling Defendant's full payment pursuant to Paragraph 58 of this Consent Decree (Payment by De Minimis Settling Defendants). With respect to each De Minimis Settling Defendant, individually, this covenant not to sue is conditioned upon: a) the satisfactory performance by that De Minimis Settling Defendant of all of its obligations under this Consent Decree; and b) the veracity of the information provided to EPA by that De Minimis Settling Defendant relating to that De Minimis Settling Defendant's involvement with the Site. This covenant not to sue extends only to De Minimis Settling Defendants and does not extend to any other person.

98. United States' Reservations as to De Minimis Settling Defendants. Notwithstanding any other provision in this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings against any individual De Minimis Settling Defendant in this action or in a new action or to issue an administrative order to any individual De Minimis Settling Defendant seeking to compel that De Minimis Settling Defendant to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if information is discovered which indicates that such De Minimis Settling Defendant contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such De Minimis Settling Defendant no longer qualifies as a *de minimis* party at the Site because that De Minimis Settling Defendant contributed greater than 3% of the total volume of similar wastes contributed by Settling Defendants to the Site, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site.

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99. United States' Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Performing Settling Defendants and each Cashout Settling Defendant (a) to perform further response actions relating to the Site, or (b) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action: (1) conditions at the Site, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

100. United States' Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Performing Settling Defendants and each Cashout Settling Defendant (a) to perform further response actions relating to the Site, or (b) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action: (1) conditions at the Site, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

101. For purposes of Paragraph 99, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 100, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

102. Commonwealth's Covenants Not to Sue Performing Settling Defendants and Cashout Settling Defendants. In consideration of the actions that will be performed and the payments that will be made by Performing Settling Defendants and each Cashout Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 105 (Pre-Certification Reservations), 106 (Post-Certification Reservations), 108 (Reservations Regarding Natural Resource Damages) and 109 (General Reservations of Rights) of this Section, the Commonwealth, on behalf of MassDEP, covenants not to sue or to take administrative action against Performing Settling Defendants and each Cashout Settling Defendant pursuant to Section 107 of CERCLA and M. G. L. c. 21E for performance of the Work and for recovery of State Past Response Costs, State Future Response Costs, Oversight Costs, and, on behalf of EEA, covenants not to sue or to take administrative action against Performing Settling Defendants and each Cashout Settling Defendant pursuant to Section 107 of CERCLA

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and M. G. L. c. 21E for Natural Resource Damages. As to Performing Settling Defendants' liability for reimbursement of State Past Response Costs and Natural Resource Damages, the foregoing covenant not to sue or take administrative action shall take effect upon Performing Settling Defendants' performance of their obligations in Paragraphs 59 (Payments for Natural Resource Damages) and 60 (Payments for State Past Response Costs) of Section XVI, including payment of any stipulated penalties that may be due thereon pursuant to Section XX (Stipulated Penalties). As to each Cashout Settling Defendants' liability for reimbursement of State Past Response Costs and Natural Resource Damages, the foregoing covenant not to sue or take administrative action shall take effect upon its full payment pursuant to Paragraph 57 (Payment by Cashout Settling Defendants). As to liability for reimbursement of Oversight Costs, State Future Response Costs and performance of the Work, these covenants not to sue or take administrative action shall take effect upon the Certification of Completion of Remedial Action by EPA pursuant to Paragraph 52(b) of Section XIV (Certification of Completion). The Commonwealth's foregoing covenants not to sue are conditioned upon the satisfactory performance by Performing Settling Defendants collectively, and by each Cashout Settling Defendant, individually, of their respective obligations under this Consent Decree. These covenants not to sue extend only to Performing Settling Defendants and Cashout Settling Defendants and do not extend to any other person.

103. Commonwealth's Covenant Not to Sue De Minimis Settling Defendants. In consideration of the payments that will be made by each De Minimis Settling Defendant under the terms of this Consent Decree, and except as specifically provided by Paragraph 104 (De Minimis Reservation) and Paragraph 110 (General Reservations of Rights), the Commonwealth, on behalf of MassDEP and EEA, covenants not to sue or take administrative action against any of the De Minimis Settling Defendants pursuant to Section 106 or 107 of CERCLA, 42 U.S.C. § 9606 or 9607, and M. G. L. c. 21E relating to the Site including with respect to Natural Resource Damages. This covenant not to sue shall take effect for each De Minimis Settling Defendant upon that De Minimis Settling Defendant's full payment pursuant to Paragraph 58 of this Consent Decree (Payment by De Minimis Settling Defendants). With respect to each De Minimis Settling Defendant, individually, this covenant not to sue is conditioned upon: a) the satisfactory performance by that De Minimis Settling Defendant of all of its obligations under this Consent Decree; and b) the veracity of the information provided to EPA by that De Minimis Settling Defendant relating to that De Minimis Settling Defendant's involvement with the Site. This covenant not to sue extends only to De Minimis Settling Defendants and does not extend to any other person.

104. Commonwealth's Reservations as to De Minimis Settling Defendants. Notwithstanding any other provision in this Consent Decree, the Commonwealth reserves, and this Consent Decree is without prejudice to, the right to institute proceedings against any individual De Minimis Settling Defendant in this action or in a new action or to issue an administrative order to any individual De Minimis Settling Defendant seeking to compel that De Minimis Settling Defendant to perform response actions relating to the Site, and/or to reimburse the Commonwealth for additional costs of response, if information is discovered which indicates that such De Minimis Settling Defendant contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such De Minimis Settling

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Defendant no longer qualifies as a *de minimis* party at the Site because that De Minimis Settling Defendant contributed greater than 3% of the total volume of similar wastes contributed by Settling Defendants, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site.

105. Commonwealth's Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the Commonwealth, on behalf of MassDEP, reserves, and this Consent Decree is without prejudice to, the right jointly with, or separately from, the United States to institute proceedings in this action or in a new action under Section 107 of CERCLA or under M. G. L. c. 21E, seeking to compel Performing Settling Defendants and each Cashout Settling Defendant (a) to perform further response actions relating to the Site, or (b) to reimburse the Commonwealth for additional costs of response actions relating to the Site, to the extent that EPA has determined that such response actions required under (a) and (b) above in this Paragraph will not significantly delay or be inconsistent with the Remedial Action, if, prior to EPA's Certification of Completion of the Remedial Action: (1) conditions at the Site, previously unknown to the Commonwealth, are discovered or become known to the Commonwealth, or (2) information, previously unknown to the Commonwealth, is received by the Commonwealth, in whole or in part, and the Commonwealth determines, pursuant to M. G. L. c. 21E, based on these previously unknown conditions or this information together with any other relevant information, that the Remedial Action is not protective of health, safety, public welfare or the environment. The United States reserves all rights it may have under applicable law to oppose any determinations made or any actions taken, ordered or proposed by the Commonwealth pursuant to this Paragraph.

106. Commonwealth's Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the Commonwealth, on behalf of MassDEP, reserves, and this Consent Decree is without prejudice to, the right jointly with or separately from, the United States to institute proceedings in this action or in a new action under Section 107 of CERCLA or M. G. L. c. 21E, seeking to compel Performing Settling Defendants and each Cashout Settling Defendant (a) to perform further response actions relating to the Site, or (b) to reimburse the Commonwealth for additional costs of response actions relating to the Site, to the extent that EPA has determined that such response actions required under (a) and (b) above in this Paragraph will not significantly delay or be inconsistent with the Remedial Action, if, subsequent to EPA's Certification of Completion of the Remedial Action: (1) conditions at the Site, previously unknown to the Commonwealth, are discovered or become known to the Commonwealth after the Certification of Completion, or (2) information, previously unknown to the Commonwealth, is received by the Commonwealth, in whole or in part, after the Certification of Completion, and the Commonwealth determines, pursuant to M. G. L. c. 21E, based on these previously unknown conditions or this information together with other relevant information, that the Remedial Action is not protective of health, safety, public welfare or the environment. The United States reserves all rights it may have under applicable law to oppose any determinations made or any actions taken, ordered or proposed by the Commonwealth pursuant to this Paragraph.

107. For purposes of Paragraph 105, the information and the conditions known to the Commonwealth shall include only that information and those conditions known to MassDEP as of the date the ROD was signed and set forth in the Record of Decision for the Site and the

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administrative record supporting the Record of Decision. For purposes of Paragraph 106, the information and the conditions known to the Commonwealth shall include only that information and those conditions known to MassDEP no later than 30 days prior to the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by MassDEP pursuant to the requirements of this Consent Decree no later than 30 days prior to Certification of Completion of the Remedial Action.

108. Reservations Regarding Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the United States and the Commonwealth reserve, and this Consent Decree is without prejudice to, the right to institute civil or administrative proceedings, as applicable, against Performing Settling Defendants and each Cashout Settling Defendant in this action or in a new action, seeking recovery of Natural Resource Damages under Section 107 of CERCLA, based on:

- a. conditions at the Site, previously unknown to the NR Trustees, that are discovered and are found by any of the NR Trustees to result in releases of hazardous substances that contribute to injury to, destruction of, or loss of Natural Resources; or
- b. information, previously unknown to the NR Trustees, is received by NR Trustee(s), and any of the NR Trustees determines that such unknown information together with other relevant information indicates that releases of hazardous substances at the Site have resulted in injury to, destruction of, or loss of Natural Resources of a type that was unknown to any of the NR Trustees, or of a magnitude greater than was known, to any of the NR Trustees.

For purposes of this Paragraph, the information and conditions known to the NR Trustees shall include only the information and conditions: (i) known to the NR Trustees as of the date of lodging of this Consent Decree and (ii) set forth in the EPA administrative record as of the date of lodging of this Consent Decree.

109. General Reservations of Rights Against Performing Settling Defendants and Cashout Settling Defendants. The United States and the Commonwealth reserve, and this Consent Decree is without prejudice to, all rights against Performing Settling Defendants and each Cashout Settling Defendant with respect to all matters not expressly included within Plaintiffs' covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States and the Commonwealth reserve all rights against Performing Settling Defendants and each Cashout Settling Defendant with respect to:

- a. claims based on a failure by Performing Settling Defendants and each Cashout Settling Defendant to meet an applicable requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. liability based on the ownership or operation of the Site by Performing Settling Defendants and each Cashout Settling Defendant after signature of this Consent Decree by Performing Settling Defendants and each Cashout Settling Defendant, excluding any such liability arising solely as a result of the transfer of title of property located on the Site to the Town of Tewksbury pursuant to the process set forth in Paragraph 27 of this Consent Decree, as to

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releases which are the subject of the remedy selected in the ROD;

d. liability based on Performing Settling Defendants' and each Cashout Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by Settling Defendants;

e. criminal liability;

f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and

g. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 14 (Modification of the SOW or Related Work Plans).

110. General Reservation of Rights Against De Minimis Settling Defendants. The United States and the Commonwealth reserve, and this Consent Decree is without prejudice to, all rights against each De Minimis Settling Defendant with respect to all matters not expressly included within Plaintiffs' covenants not to sue in Paragraphs 97 and 103. Notwithstanding any other provision of this Consent Decree, the United States and the Commonwealth reserve all rights against that De Minimis Settling Defendant with respect to:

a. liability for failure to meet a requirement of this Consent Decree;

b. criminal liability; or

c. liability based upon the ownership or operation of the Site, or upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by that De Minimis Settling Defendant.

111. Work Takeover.

a. In the event EPA determines that Performing Settling Defendants have (i) ceased implementation of any portion of the Work, or (ii) are seriously or repeatedly deficient or late in their performance of the Work, or (iii) are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to the Performing Settling Defendants, with a copy to MassDEP. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Performing Settling Defendants a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 10-day notice period specified in Paragraph 111(a), Performing Settling Defendants have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portions of the Work as EPA deems necessary ("Work Takeover"). EPA shall notify Performing Settling Defendants in writing

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(which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph.

c. Performing Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 111(b). However, notwithstanding Performing Settling Defendants' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 111(b) until the earlier of (i) the date that Performing Settling Defendants remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice or (ii) the date that a final decision is rendered in accordance with Section XIX (Dispute Resolution), requiring EPA to terminate such Work Takeover.

d. After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any performance guarantee(s) provided pursuant to Section XIII (Performance Guarantee) of this Consent Decree, in accordance with the provisions of Paragraph 50 of that Section. If and to the extent that EPA is unable to secure the resources guaranteed under any such performance guarantee(s) and the Performing Settling Defendants fail to remit a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed, all in accordance with the provisions of Paragraph 50, any unreimbursed costs incurred by EPA in performing Work under the Work Takeover shall be considered United States Future Response Costs that Performing Settling Defendants shall pay pursuant to Section XVI (Payments for Response Costs and Natural Resource Damages).

112. Notwithstanding any other provision of this Consent Decree, the United States and the Commonwealth retain all authority and reserve all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY SETTling DEFENDANTS

113. Covenant Not to Sue. Subject to the reservations in Paragraph 114, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or the Commonwealth, including any department, agency or instrumentality of the United States or the Commonwealth, with respect to the Site, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through Sections 106(b)(2), 107, 111, 112, and 113 of CERCLA, or any other provision of law;

b. any claims under CERCLA Sections 107 or 113 or M. G. L. c. 21E, related to the Site; or

c. any claims arising out of response actions at or in connection with the Site, including claims based on EPA's or MassDEP's, as the case may be, selection of response actions, oversight of response activities or approval of plans for such activities, including any claim under the United States Constitution, the Massachusetts Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

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114. Except as provided in Paragraph 116 (Waiver of Claims Against MSW Generators and Transporters), and Paragraph 124 (Waiver, Res Judicata and Other Defenses), these covenants not to sue shall not apply in the event that the United States or the Commonwealth brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 99 (United States Pre-Certification Reservations), 100 (United States Post-Certification Reservations), 105 (Commonwealth's Pre-Certification Reservations), 106 (Commonwealth's Post-Certification Reservations) and 109 (General Reservations), other than the General Reservations set forth in Paragraphs 109(a) (failure to comply), 109(e) (criminal liability) or 109(f) (violations of law during or after implementation of the Remedial Action), or as to De Minimis Settling Defendants, Paragraphs 98 (reopener), 110(b) (criminal liability) or 110(c) (violations of law during or after implementation of the Remedial Action), but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States or the Commonwealth is seeking pursuant to the applicable reservation. Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

115. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

116. Waiver of Claims Against MSW Generators and Transporters. Settling Defendants agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for all matters relating to the Site against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of Municipal Solid Waste ("MSW") at the Site, if the volume of MSW disposed, treated or transported by such person to the Site did not exceed 0.2 percent of the total volume of waste at the Site.

117. The waiver in Paragraph 116 shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Settling Defendant. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines that: (a) the MSW contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action

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or natural resource restoration at the Site; (b) the person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927; or (c) the person impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site.

118. De Minimis Settling Defendants' Waiver of Claims. De Minimis Settling Defendants agree not to assert any claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA or M.G.L. c. 21E) that they may have for all matters relating to the Site against each other or any other person who is a potentially responsible party under CERCLA or M.G.L. c. 21E at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a De Minimis Settling Defendant may have against any person if such person asserts or has asserted a claim or cause of action relating to the Site against such De Minimis Settling Defendant.

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

119. Except as provided in Paragraph 116 (Waiver of Claims Against MSW Generators and Transporters) and Paragraph 118 (De Minimis Settling Defendants' Waiver of Claims) nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 116 (Waiver of Claims Against MSW Generators and Transporters) and Paragraph 118 (De Minimis Settling Defendants' Waiver of Claims), each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States or the Commonwealth, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), and Chapter 21E, as applicable, to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2) of CERCLA, or Chapter 21E.

120. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), and that each Performing Settling Defendant is entitled, as of the Effective Date, and each Cashout Settling Defendant and De Minimis Settling Defendant, is entitled on the later of the Effective Date or the date on which it makes or causes to be made its full payment pursuant to Paragraphs 57 and 58, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and for De Minimis Settling Defendants, Section 122(g)(5) of CERCLA, 42 U.S.C. § 9622(g)(5), or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred and Natural Resource Damages, at or in connection with the Site, by the United States and the Commonwealth or any other person; provided, however, that if the United States exercises rights under the reservations in Section XXI (Covenants Not to Sue by Plaintiffs), other than in Paragraphs 109(a) and 110(a) (claims for

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failure to meet a requirement of settlement), 109(e) and 110(b) (criminal liability), or 109(f) (violations of federal/state law during or after implementation of the Remedial Action), or if the State exercises rights under the above-referenced reservations, the “matters addressed” in this Consent Decree will no longer include those response costs or response actions or Natural Resource Damages that are within the scope of those reservations.

121. The Parties agree, and by entering this Consent Decree this Court finds, that pursuant to M. G. L. c. 21E, § 3A(j)(2), each Performing Settling Defendant is entitled, as of the Effective Date, and each Cashout Settling Defendant and De Minimis Settling Defendant, on the Effective Date or the date on which the Commonwealth receives notice that it has made or caused to be made its full payment pursuant to Paragraphs 57 and 58, whichever comes later, is entitled to protection from claims brought pursuant to M. G. L. c. 21E, regarding the matters addressed in this Consent Decree for the Site, for cost recovery, contribution, and equitable share as to those persons receiving notice and an opportunity to comment on this Consent Decree in accordance with M. G. L. c. 21E, § 3A(j)(2). As of the date of entry of this Consent Decree, this Consent Decree constitutes a “judicially approved settlement” as that term is used in M. G. L. c. 21E, § 3A(j)(2). For purposes of this Paragraph, “matters addressed” shall be as defined in Paragraph 120. The 90-day comment period shall commence 30 days after the date of lodging of this Consent Decree. Settling Defendants’ failure to provide timely and adequate notice to one person shall not affect their rights as against any other person who received such notice.

122. Each Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify the United States and the Commonwealth, in writing no later than 60 days prior to the initiation of such suit or claim.

123. Each Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing the United States and the Commonwealth, within 10 days of service of the complaint on each such Settling Defendant. In addition, each such Settling Defendant shall notify the United States and the Commonwealth within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

124. Waiver, Res Judicata and Other Defenses. In any subsequent administrative or judicial proceeding initiated by the United States or the Commonwealth for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the Commonwealth in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiffs).

XXIV. ACCESS TO INFORMATION

125. Settling Defendants shall provide to EPA and the Commonwealth, upon request, copies of all records, reports, documents, electronic files, and other information (hereinafter referred to as “Records”) within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not

Sutton Brook Disposal Area Superfund Site Consent Decree

limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA and the Commonwealth, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

126. Business Confidential and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the Records submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Defendants that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Settling Defendants.

b. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to the Commonwealth under this Consent Decree to the extent permitted by and in accordance with State law. Documents or information determined to be confidential by MassDEP will be afforded by the Commonwealth the protection specified under State law. If no claim of confidentiality accompanies documents or information when they are submitted to the Commonwealth, or if MassDEP has notified Settling Defendants that the documents or information are not confidential under State law, the public may be given access to such documents or information without further notice to Settling Defendants.

c. Settling Defendants may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing Records, they shall provide Plaintiffs with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the contents of the Record; and (6) the privilege asserted by Settling Defendants. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States and the Commonwealth in redacted form to mask the privileged portion only. Settling Defendants shall retain all Records that they claim to be privileged until the United States and the Commonwealth have had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

d. No Records created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged or confidential.

127. No claim of confidentiality or privilege shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

Sutton Brook Disposal Area Superfund Site Consent Decree

XXV. RETENTION OF RECORDS

128. Until 10 years after Settling Defendants' receipt of EPA's notification pursuant to Paragraph 53(b) of Section XIV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA or Chapter 21E with respect to the Site, provided, however, that Settling Defendants who are potentially liable as owners or operators of the Site or as transporters to the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA or Chapter 21E with respect to the Site. Each Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

129. At the conclusion of this document retention period, Settling Defendants shall notify the United States and the Commonwealth at least 90 days prior to the destruction of any such Records, and, upon request by the United States or the Commonwealth, Settling Defendants shall deliver any such Records to EPA and/or MassDEP. Settling Defendants may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiffs with the following: (a) the title of the Record; (b) the date of the Record; (c) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (d) the name and title of each addressee and recipient; (e) a description of the subject of the Record; and (f) the privilege asserted by Settling Defendants. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States and the Commonwealth in redacted form to mask the privileged portion only. Settling Defendants shall retain all Records that they claim to be privileged until the United States and the Commonwealth have had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Defendants' favor. However, no Records created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged or confidential.

130. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the Commonwealth or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and MassDEP requests for information pursuant to M. G. L. c. 21E, if any.

131. Settling Defendants may establish a document and data storage repository ("Record Repository") in a form and at a location acceptable to EPA and MassDEP. Performing

Sutton Brook Disposal Area Superfund Site Consent Decree

Settling Defendants shall ensure that the Record Repository maintains and secures all stored Records and organizes all Records in a manner that enables retrieval of all Records submitted to each Settling Defendant. Notwithstanding any other obligation set forth in this Section XXII and subject to their ability to assert claims of privilege as provided above, any Settling Defendant, other than a Settling Defendant that is potentially liable on the Effective Date as an owner or operator of the Site or a transporter to the Site, and any contractor or agent of a Settling Defendant, other than a Settling Defendant that is potentially liable as of the Effective Date as an owner or operator of the Site or a transporter to the Site, may comply with its obligations under this Section to retain Records that relate to its or its predecessors' arrangement for disposal at the Site by taking the following steps:

- a. The Settling Defendant or contractor or agent of a Settling Defendant shall execute a certification containing the language of the first sentence of Paragraph 128.
- b. The Settling Defendant shall certify that it has sent originals or copies of all non-identical copies of Records and documents (including Records or documents in electronic form) then in its possession or control that relates to its or its predecessors' arrangement for disposal at the Site to the Record Repository.
- c. The contractor or agent of a Settling Defendant shall certify that it has sent originals or copies of all non-identical copies of Records and documents (including Records or documents in electronic form) then in its possession or control that relates to its client's or principal's arrangement for disposal at the Site to the Record Repository.

XXVI. NOTICES AND SUBMISSIONS

132. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the Commonwealth, MassDEP and Settling Defendants, respectively. Notices required to be sent to EPA, and not to the United States, under the terms of this Consent Decree should not be sent to the U.S. Department of Justice. Notices required to be sent to MassDEP, and not to the Commonwealth, under the terms of this Consent Decree should not be sent to the Massachusetts Office of the Attorney General.

As to the United States:

Chief, Environmental Enforcement Section
 Environment and Natural Resources Division
 U.S. Department of Justice
 P.O. Box 7611
 Washington, D.C. 20044-7611
 Re: DJ # 90-11-2-07854/1 and 07854/2

Sutton Brook Disposal Area Superfund Site Consent Decree

As to EPA:

Don McElroy
EPA Project Coordinator
United States Environmental Protection Agency
Region 1, New England
One Congress Street, Suite 1100
Boston MA 02114

As to the Regional Financial
Management Officer:

Regional Financial Management Officer
United States Environmental
Protection Agency Mail Code MCO
Region 1, New England
One Congress Street, Suite 1100
Boston MA 02114

As to the Commonwealth:

Louis Dundin, Assistant Attorney General
Environmental Protection Division
Massachusetts Office of the Attorney General
One Ashburton Place
Boston, MA 02108
RE: Sutton Brook Disposal Area Superfund Site
and

Dorothy Allen
State Project Manager
Sutton Brook Disposal Area Superfund Site
Department of Environmental Protection
Bureau of Waste Site Cleanup
One Winter Street, 8th Floor
Boston, MA 02108

As to MassDEP:

Dorothy Allen
State Project Manager
Sutton Brook Disposal Area Superfund Site
Department of Environmental Protection
Bureau of Waste Site Cleanup
One Winter Street, 8th Floor
Boston, MA 02108

As to Performing Settling Defendants,
Cashout Settling Defendants, or De Minimis
Settling Defendants:

Thomas Dorsey
de maximis, inc.
450 Montbrook Lane
Knoxville, TN 37919

Sutton Brook Disposal Area Superfund Site Consent Decree

With a copy to:

Robert C. Kirsch, Esq.
Wilmer Cutler Pickering Hale and Dorr
60 State Street
Boston, MA 02109

XXVII. RETENTION OF JURISDICTION

133. This Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution).

XXVIII. APPENDICES

134. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the ROD.

“Appendix B” is the SOW.

“Appendix C” is the map of the Site.

“Appendix D-1” is the list of Performing Settling Defendants.

“Appendix D-2” is the list of and payment amounts for Cashout Settling Defendants.

“Appendix D-3” is the list of and payment amounts for De Minimis Settling Defendants.

“Appendix D-4” is the payment schedule for the Town.

“Appendix E” is the Form of Grant of Environmental Restriction and Easement.

“Appendix F-1” is the form of the Sutton Brook Disposal Area Superfund Site De Minimis Settlement Trust Agreement.

“Appendix F-2” is the form of the Sutton Brook Disposal Area Superfund Site Settlement Trust Agreement.

“Appendix F-3” is the Performance Guarantee financial test demonstration for a local government or political subdivision of the State.

Sutton Brook Disposal Area Superfund Site Consent Decree

XXIX. COMMUNITY RELATIONS

135. If requested by EPA, Performing Settling Defendants shall participate in the community relations plan to be developed by EPA after a reasonable opportunity for review and comment by the Commonwealth. EPA will determine the appropriate role for Performing Settling Defendants under the Plan. Performing Settling Defendants shall also cooperate with EPA and the Commonwealth in providing information regarding the Work to the public. As requested by EPA or the Commonwealth, Performing Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA or the Commonwealth to explain activities at or relating to the Site.

XXX. MODIFICATION

136. Material modifications to the SOW may be made only by written notification to and written approval of the United States, Performing Settling Defendants, and the Court. Prior to providing its approval to any material modification, the United States will provide the Commonwealth with a reasonable opportunity to review and comment on the proposed modification.

137. Modifications to the schedules specified in the Consent Decree for completion of the Work, or modifications to the SOW that do not materially alter that document, may be made by written agreement between EPA, after providing the Commonwealth with a reasonable opportunity to review and comment on the proposed modification, and the Performing Settling Defendants. Such non-material modifications will become effective thereafter when signed by EPA and Performing Settling Defendants.

138. Non-material modifications to the Consent Decree other than those addressed above in Paragraph 137 may be made only by written notification to and written approval of the United States, the Commonwealth and the Settling Defendants. Such modifications will become effective upon filing with the Court by the United States. Material modifications to the Consent Decree and any modifications to the Performance Standards may be made only by written notification to and written approval of the United States, the Commonwealth, the Settling Defendants, and the Court.

139. Nothing in this Section shall affect the obligations of the Performing Settling Defendants pursuant to the provisions of Paragraph 14 (Modification of the SOW or Related Work Plans) of this Consent Decree.

140. Modifications (non-material or material) that do not affect the obligations of, and that fully protect the benefits afforded to, Cashout Settling Defendants and De Minimis Settling Defendants may be executed without the signatures of the Cashout Settling Defendants and the De Minimis Settling Defendants.

141. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

142. For purposes of this Section, the Consent Decree shall not include the SOW or other attachments to the Consent Decree.

Sutton Brook Disposal Area Superfund Site Consent Decree

XXXI. CERTIFICATION OF DE MINIMIS SETTling DEFENDANTS

143. By signing this Consent Decree, each De Minimis Settling Defendant certifies, individually, that, to the best of its knowledge and belief, it:

a. has conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. has and will comply fully with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), or similar requests from MassDEP, if any.

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

144. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. In the event of the United States' withdrawal from this Consent Decree, the Commonwealth reserves its right to withdraw from this Consent Decree. The Commonwealth also reserves the right to withdraw or withhold its consent to the entry of this Consent Decree if comments received disclose facts or considerations which show that the Consent Decree violates State law, or if comments received disclose facts or considerations which show that the Consent Decree's termination of the rights of third parties by operation of M. G. L. c. 21E, § 3A (j)(2) would render the Consent Decree unfair. In the event of the Commonwealth's withdrawal from this Consent Decree, the United States reserves its right to withdraw from this Consent Decree. Settling Defendants consent to the entry of this Consent Decree without further notice.

145. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIII. SIGNATORIES/SERVICE

146. Each undersigned representative of a Settling Defendant to this Consent Decree, the Commonwealth, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

Sutton Brook Disposal Area Superfund Site Consent Decree

147. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

148. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. Settling Defendants need not file an answer to the complaints in this action unless or until the Court expressly declines to enter this Consent Decree.

XXXIV. FINAL JUDGMENT

149. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the Commonwealth, and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS __ DAY OF _____, 20____.

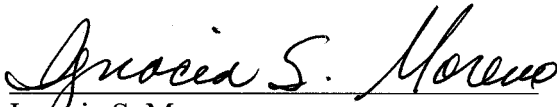
United States District Judge

Sutton Brook Disposal Area Superfund Site Consent Decree


THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR THE UNITED STATES OF AMERICA

12/15/09
Date


Ignacia S. Moreno
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

12/22/09
Date


Peter M. Flynn
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-4352
peter.flynn@usdoj.gov

Sutton Brook Disposal Area Superfund Site Consent Decree

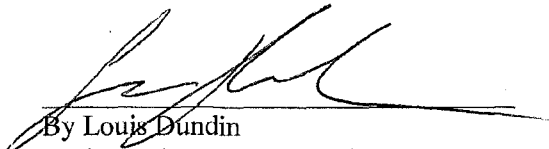
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR THE COMMONWEALTH OF MASSACHUSETTS:

MARTHA COAKLEY
ATTORNEY GENERAL

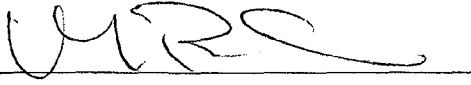
Date

10/27/09


By Louis Dundin
Assistant Attorney General
Environmental Protection Division
Massachusetts Office of the Attorney General
One Ashburton Place, Room 1813
Boston, MA 02108


Date

10/27/09


By Matthew Brock
Assistant Attorney General (for NRD Only)
Environmental Protection Division
Massachusetts Office of the Attorney General
One Ashburton Place, Room 1813
Boston, MA 02108

Date

9/23/09


Martin Suuberg, Regional Director
Central Regional Office
Department of Environmental Protection
627 Main Street
Worcester, MA 01608

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Allied Waste Systems, Inc., for itself and on behalf of predecessor Reliable Rubbish Disposal, Inc.

September 18, 2009
Date

Signature:

Name (print):

Title:

Address:

T. M. Benter
Tim M. Benter
Vice President
Republic Services, Inc.
18500 N. Allied Way
Phoenix, AZ 85054

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print):

~~Title:~~

Address:

Ph. Number:

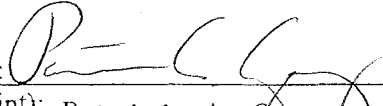
CT Corporation System
155 Federal Street
Ste 700
Boston, MA 02110
617-757-6400

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR AMERICAN SCIENCE AND ENGINEERING, INC.

September 9, 2009
Date

Signature: 
Name (print): Patricia A. Gray
Title: Senior Vice President & General Counsel
Address: 829 Middlesex Turnpike
Billerica, MA 01821

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Patricia A. Gray
Title: Senior Vice President & General Counsel
Address: 829 Middlesex Turnpike
Billerica, MA 01821
Ph. Number: 978-262-8700


* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Anton's Cleaners, Inc.

Date 9/9/09

Signature: 

Name (print): Charles A. Anton

Title: president

Address: 500 Clark Road
Tewksbury, MA 01876

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Franklin G. Stearns, Esq.

Title: Partner

Address: K+L GATES, LLP
One Lincoln Street
Boston, MA 02111-2950

Ph. Number: 617-951-9275

* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

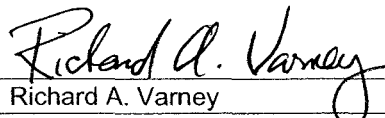
Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

Ausimont Industries, Inc., for itself and on behalf of predecessor entities
FOR Compo Industries, Inc., Pandel-Bradford, Inc., and Pandel, Inc.

September 22, 2009

Date

Signature: 
Name (print): Richard A. Varney
Title: Designated Agent
Address: Ausimont Industries, Inc.
3 Prospect Street
Morristown, NJ 07960

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Mitchell Gertz
Title: Director, Health, Safety and Environment
Address: c/o Solvay Solexis, Inc.
10 Leonard Lane
West Deptford, NJ 08086
Ph. Number: 856-251-6630


* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR AVCO Corporation *

September 23, 2009
Date

Signature: 
Name (print): Carl G. Buzawa
Title: Assistant Secretary
Address: 201 Lowell St.
Wilmington, MA 01887

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Jamieson Schiff
Title: Director
Address: 40 Westminister St.
Providence, RI 02903
Ph. Number: 401.457.2422

* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR BASF Corporation.

September 29, 2009
Date

Signature: Nan Bernardo
Name (print): NAN BERNARDO
Title: SENIOR ENVIRONMENTAL COUNSEL
Address: BASF Corporation
100 Campus Drive
Florham Park, NJ
07932

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Nan Bernardo
Title: Senior Environmental Counsel
Address: BASF Corporation
100 Campus Drive
Florham Park, NJ 07932
Ph. Number: 973-245-6050

* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR BFI Waste Systems of North America, LLC

September 18, 2009
Date

Signature:

Name (print):

Title:

Address:

T. M. Benter
Tim M. Benter
Vice President
Republic Services, Inc.
18500 N. Allied Way
Phoenix, AZ 85054

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print):

Title:

Address:

Ph. Number:


CT Corporation System
155 Federal Street Ste. 700
Boston, MA 02110
617-757-6400

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR BOSTON & MAINE Corp.

Date 10/9/09

Signature: 
Name (print): Dana Banks
Title: Environmental Director
Address: 1700 Iron Horse Park
North Billerica, MA 01862

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): ROBERT B. BURNS, Esq.
Title: CORPORATE COUNSEL
Address: 1700 IRON HORSE PARK
NO. BILLERICA, MA 01862
Ph. Number: (978) 663-1215

* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Browning-Ferris Industries, Inc. (Massachusetts), for itself and on behalf of predecessor entities Barry Bros., Inc., Greenwood Disposal Company, Inc., and Miller Disposal Services, Inc.

September 18, 2009
Date

Signature:

Name (print):

Title:

Address:

TMB

Tim M. Benter

Vice President

18500 N. Allied Way
Phoenix, AZ 85054

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print):

Title:

Address:

Ph. Number:

CT Corporation System

155 Federal Street
Ste. 700

Boston, MA 02110


617-757-6400

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR BTU INTERNATIONAL, INC.

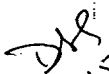
September 15, 2009
Date


Signature: _____
Name (print): Paul van der Wansem
Title: BTU INTERNATIONAL, INC.
Address: 23 ESQUIRE ROAD
NORTH BILLERICA, MA 01862

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): COLBURN T. CHERNEY
Title: PARTNER
Address: ROPES & GRAY, LLP
700 12th STREET, NW, SUITE 900
WASHINGTON, DC 20005
Ph. Number: 202-508-4614

* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.



9-15-09

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Cabot Corporation *

9/8/09
Date

Signature: 
Name (print): Brian A. Berube
Title: Vice President & General Counsel
Address: Two Seaport Lane, Suite 1300
Boston, MA 02210

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Gerard A. Caron
Title: Counsel for Cabot Corporation
Address: Two Seaport Lane, Suite 1300
Boston, MA 02210
Ph. Number: (617) 342-6080


* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

Computervision LLC, by its sole member
FOR Parametric Technology Corporation *

September 4, 2009
Date

Signature: 
Name (print): Aaron C. von Staats
Title: Secretary
Address: 140 Kendrick Street
Needham, MA 02494

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Corporation Trust Company
Title:
Address: 1209 Orange Street
Wilmington, DE 19801

Ph. Number: (866) 252-8615

* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR E. I. du Pont de Nemours* and Company

Sept 11 2009
Date

Signature: [Signature]
Name (print): Tom A. Ei
Title: Remediation Team Manager
Address: Du Pont Co.
4417 Lancaster Pike
CRP 715/204
Wilmington DE 19805

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Patricia McGee
Title: Corporate Counsel
Address: 1007 Market Street
Wilmington, DE 19898
Ph. Number: 302-773-0149

* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Emhart Industries, Inc.

9/9/09
Date

Signature: Linda H. Biagioni
Name (print): Linda H. Biagioni
Title: Vice President
Address: Emhart Industries, Inc.
701 East Joppa Road
Towson, MD 21286

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Laura Ford Brust
Title: Counsel
Address: Sullivan & Worcester LLP
1666 K Street, NW
Washington, DC 20006
Ph. Number: (202) 370-3923


A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR FC Meyer Packaging Inc

9/16/09
Date

Signature: 
Name (print): Kenneth B. Schulman
Title: President
Address: 108 Main St
Norwalk CT 06851

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): SAME AS ABOVE
Title: _____
Address: 108 MAIN ST
NORWALK CT 06851
Ph. Number: 203.847.8500

* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Fisons Corporation

September 15, 2009
Date

Signature: Kathleen A Winter
Name (print): Kathleen A. Winter
Title: President
Address: 3711 Kennett Pike
Greenville, Delaware 19807

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Corporation Service Company
Title: - - -
Address: 2711 Centerville Road
Suite 400
Wilmington, Delaware 19808
Ph. Number: 1-800-927-9800

* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR General Lark and Chemical Corporation

September 9, 2009
Date

Signature: Mary H. Terzino
Name (print): MARY H. TERZINO
Title: Authorized Representative
Address: 2030 Dow Center
Midland, MI
48674

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): CT Corporation System
Title: _____
Address: 155 Federal Street
Suite 700
Boston, MA 02110
Ph. Number: _____

* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR The Gillette Company *

Sept 10, 2009
Date

Signature: Margaret W. Dewan
Name (print): Margaret W. Dewan
Title: Senior Counsel
Address: 299 East 6th Street, 9th Fl
Cincinnati, OH 45202

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Margaret W. Dewan
Title: Senior Counsel
Address: 299 East 6th Street, 9th fl
Cincinnati, OH 45202

Ph. Number: 513-983-1549

* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Hewlett Packard Company and its predecessors (including Apollo Computer, Inc. and Digital Equipment Corporation)*

September 6, 2009

DATE

* Signature: 

Name (print): Jonathan Bauer

Title: Environmental Affairs Manager

Address: Hewlett Packard Company

1501 Page Mill Road, 1000

Palo Alto, California 94304

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

cc: Christopher M. Roe, Esquire
Fox Rothschild LLP
Eagleview Corporate Center
747 Constitution Drive
Suite 100
P.O. Box 673
Exton, PA 19341
(610) 458-4900

Name (print): Jennifer Morris

Title: Environmental In House Counsel

Address: Hewlett Packard Company

3000 Hanover Street

MS-1050

Palo Alto, California 94304

Ph. Number: (650) 857-7781


* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Holt and Bugbee Company *

09/09/2009
Date

Signature: 
Name (print): William A. Collins
Title: Vice President Finance
Address: 1600 Shawsheen Street
Tewksbury, MA 01876

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): David P. Rosenblat
Title: Attorney for Holt and Bugbee Company
Address: Burns & Levinson LLP
125 Summer Street
Boston, MA 02110
Ph. Number: (617) 345-3330


* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Honeywell International Inc.

September 16, 2009
Date

Signature: 
Name (print): John J. Morris
Title: Remediation Portfolio Director
Address: 101 Columbia Road
Morristown, New Jersey 07962

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Kerri Stelcen
Title: Associate
Address: Arnold & Porter LLP
555 Twelfth Street, NW
Washington, DC 20004
Ph. Number: 202-942-5529

* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR LEGGETT & PLATT, INCORPORATED

For itself and on behalf of its predecessor entities
Cambridge Tool and Manufacturing Co., Inc. and
JapEnameLac Corp.

9/16/09
Date

Signature: [Signature]
Name (print): Scott Douglas
Title: U.P.
Address: 1 Leggett Road
Carthage MO 64836

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Ernest Jett
Title: Senior Vice President
Address: 1 Leggett Road
Carthage, MO 64836
Ph. Number: 417-358-8131

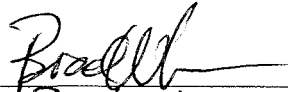
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Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Lockheed Martin Corp. (for itself and on behalf of predecessor entity RCA)

September 8, 2009
Date

Signature: 
Name (print): Brad W. Owens
Title: Director, Environmental Remediation
Address: Lockheed Martin Corp.
6801 Rockledge Dr.
Bethesda, MD 20817

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Corporation Service Company
Title: _____
Address: 84 State Street
Boston, MA 02109
Ph. Number: (617) 227-9590


* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

M/A-COM, Inc., for itself and on behalf
of predecessor entity Microwave
FOR Associates, Inc.

9-29-09
Date

Signature: 
Name (print): Carl Schultz
Title: Sr. Counsel
Address: M.S. 140-42
P.O. Box 3608
Harrisburg PA 17105

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Bonnie A. Barnett
Title: Counsel
Address: One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103
Ph. Number: (215) 988-2916

* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Majilite Manufacturing, Inc.

Date Sept 14/2009

Signature: C. Michael Willwerth
Name (print): C. Michael Willwerth
Title: President
Address: Majilite Manufacturing, Inc.
1530 Broadway Road
Dracut, MA 01826

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Frank C. DeGuire, Jr.
Title: General Counsel
Address: Meridian Industries, Inc.
100 E. Wisconsin Ave. Suite 2750
Milwaukee, WI 53202
Ph. Number: 414-224-0610

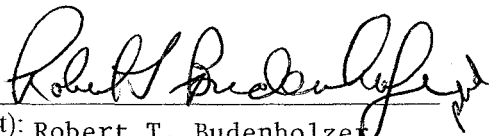
* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Mallinckrodt LLC, for itself and on behalf of predecessor entity
International Minerals and Chemical Co. on behalf of its subsidiary
Kingston Steel Drum Co.

9/28/2009
Date

Signature: 
Name (print): Robert T. Budenholzer
Title: Vice President
Address: 675 McDonnell Blvd.
Hazelwood, MO 63042

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Patricia H. Duft
Title: Vice President
Address: Mallinckrodt LLC d/b/a Covidien
675 McDonnell Blvd.
Hazelwood, MO 63042
Ph. Number: 314-654-2000

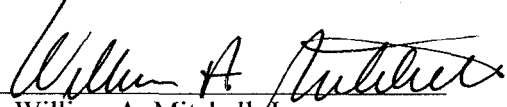
* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

September 30, 2009

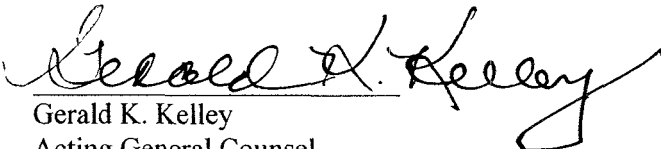
Signature: 

Name: William A. Mitchell, Jr.

Title: Acting General Manager

Address: Massachusetts Bay Transportation Authority
Ten Park Plaza
Boston, MA 02116-3974

APPROVED AS TO FORM:


Gerald K. Kelley
Acting General Counsel

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name: Gerald K. Kelley

Title: Acting General Counsel

Address: Massachusetts Bay Transportation Authority
Ten Park Plaza, Legal Dept, 7th Floor
Boston, MA 02116-3974

Phone: (617) 222-3469

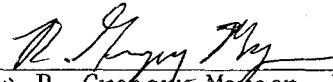
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Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Massachusetts Institute of Technology

9/18/09
Date

Signature: 
Name (print): R. Gregory Morgan, Esq.
Title: Vice President and General Counsel
Address: 77 Massachusetts Avenue
Room 7-206
Cambridge, MA 02139-3407
(617) 452-2082

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Jaren D. Wilcoxson, Esq.
Title: Counsel
Address: 77 Massachusetts Avenue
Building 10-370
Cambridge, MA 02139-3407
Ph. Number: (617) 253-7724

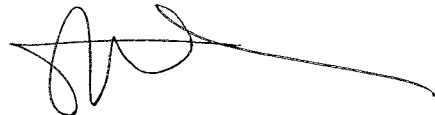
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Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Millen Inc f/k/a Millen Industries, Inc.

9/16/09
Date


Signature: _____
Name (print): Steven A. Schulman
Title: President
Address: 108 Main Street
Norwalk CT
06851

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): SAME AS ABOVE
Title: _____
Address: 108 MAIN ST
NORWALK, CT 06851
Ph. Number: 203.847.5500

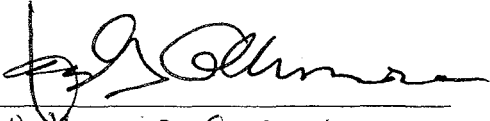
* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Millen Industries, Inc.: a/k/a
Frank C. Meyer

10.25.09
Date

Signature: 
Name (print): Kevin G. Collimore
Title: Counsel for Millen Industries, Inc.
Address: 10 East Pearl Street
Nashua, NH 03060

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Kevin G. Collimore
Title: Counsel for Millen Industries, Inc.
Address: 10 East Pearl Street
Nashua, NH 03060
Ph. Number: 603-881-5500


* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR National Grid USA, for itself and on behalf
of its subsidiaries New England Power Company
and Massachusetts Electric Company

9/30/09
Date

Signature: 
Name (print): DAVID C. LODEMORE
Title: VP ENVIRONMENTAL
Address: 40 SYWAN ROAD
WALTHAM MA 02451

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Robert C. Kirsch
Title: Partner
Address: WilmerHale
60 State Street
Boston, MA 02109
Ph. Number: (617) 526-6779

* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR NEW BALANCE ATHLETIC SHOE, INC

SEPT 11, 2009
Date

Signature: John K. Withers
Name (print): JOHN K. WITHERS
Title: EXECUTIVE VICE PRESIDENT
Address: 20 GURST ST
BOSTON MASS 02131

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Christopher P. Davis
Title: Partner
Address: Goodwin Procter LLP
Exchange Place
Boston, MA 02109
Ph. Number: 617-570-1354

* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Piconics, Inc.

September 14, 2009
Date

Signature: [Signature]
Name (print): Daniel B. Merrill
Title: General Manager
Address: Piconics, Inc.
26 Cummings Road
Tyngsboro, MA 01879-1498

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Same as above, also
Name (print): Jamy A. Madaja, Esq.
Title: Attorney
Address: Buchanan & Associates
33 Mt. Vernon St.
Dorset, MA 02108
Ph. Number: 617-227-8410


* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Raytheon Company *

Date 9/14/2009

Signature: 
Name (print): Robert J. Moore
Title: Vice President - Business Services
Address: 870 Winter Street
Waltham, MA 02451

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Jeffrey B. Axelrod
Title: Senior Environmental Counsel
Address: 870 Winter Street
Waltham, MA 02451
Ph. Number: 781-522-3059

* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Roche Brothers Barrel & Drum Co., Inc.

9/11/09
Date

Signature: Charles E. Roche
Name (print): Charles E. Roche
Title: President
Address: 161 Phoenix Avenue
Lowell, MA 01852

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Francis M. Lynch
Title: Attorney
Address: Keegan Werlin LLP
265 Franklin Street
Boston, MA 02110
Ph. Number: 617-951-1400

* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Schneider Automation

Division of Square D Company, for itself
and on behalf of predecessor entity
Modicon, Inc.

Date 10/13/09

Signature: Robert W. Bell
Name (print): ROBERT W. BELL
Title: ATTORNEY
Address: 40 SCHNEIDER AUTOMATION
ONE HIGH STREET
NORTH ANDOVER, MA 01845

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Bonnie Allyn Barnett
Title: Counsel - Drinker Biddle & Reath
Address: One Logan Square
18th & Cherry Sts.
Philadelphia, PA 19103
Ph. Number: (215) 988-2700

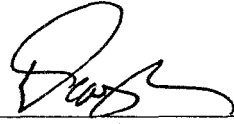
* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Sears, Roebuck and Co.

September 28, 2009
Date

Signature: 

Name (print): DIANA HSU

Title: Assistant General Counsel

Address: Seas
3333 Beverly Rd. B6-339A
Hoffman Estates, IL 60179

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): LAW DEPARTMENT - SEARS

Title: _____

Address: 3333 Beverly Rd.
Hoffman Estates, IL 60179

Ph. Number: 847-286-2400

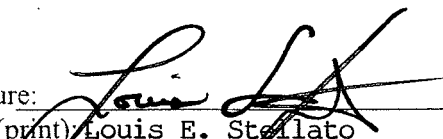
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Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR The Sherwin-Williams Company

September 15, 2009
Date

Signature: 
Name (print): Louis E. Stellato
Title: Senior Vice President, General Counsel & Secretary
Address: 101 Prospect Avenue, NW
1100 Midland Building
Cleveland, OH 44115-1075

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Allen J. Danzig
Title: Associate General Counsel - Environmental
Address: The Sherwin-Williams Company
101 Prospect Avenue, NW
Cleveland, OH 44115-1075
Ph. Number: 216-566-2482

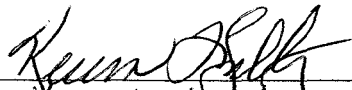
* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR SPX Corporation, for itself and on behalf of predecessor entity GCA Corporation

Date 9/8/09

Signature: 
Name (print): KEVIN L. KELLY
Title: SENIOR VICE PRESIDENT
Address: SPX Corporation
13515 Ballantyne Corporate Place
Charlotte, NC 28277

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Daniel McGrade
Title: Director, Environmental
Address: SPX Corporation
13515 Ballantyne Corporate Place
Charlotte, NC 28277
Ph. Number: (704) 752-4430

* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

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FOR Tewksbury State Hospital (Massachusetts Dept. of Public Health)

09-22-09
Date

Signature: Carol Weisberg
Name (print): Carol Weisberg
Title: Chief Financial Officer
Address: 250 Washington Street
Boston, MA 02108

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): James Ballin
Title: Deputy General Counsel
Address: Office of the General Counsel
250 Washington Street
Boston, MA 02108
Ph. Number: 617-624-5220

* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

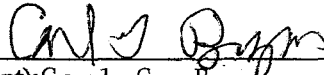
Sutton Brook Disposal Area Superfund Site Consent Decree

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FOR Textron Systems Corporation*

September 23, 2009

Date

Signature: 
Name (print): Carl G. Buzawa
Title: Sr. Vice President
Address: 201 Lowell St.
Wilmington, MA 01887

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Jamieson Schiff
Title: Director
Address: 40 Westminster St.
Providence, RI 02903
Ph. Number: 401.457.2422

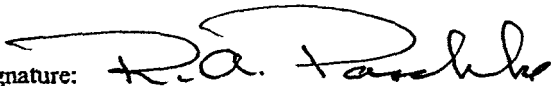
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Sutton Brook Disposal Area Superfund Site Consent Decree

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FOR 3M Company (f/k/a Minnesota Mining
and Manufacturing Co.)

September 14 2009
Date

Signature: 
Name (print): Robert A. Paschke
Title: Manager, Corporate Environmental Programs
Address: 3M Center
Bldg. 224-2E-55
St. Paul, MN 55144-1000

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

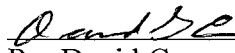
Name (print): Donald J. Camerson, II, Esq.
Title: Attorney
Address: Bressler, Amery & Ross, P.C.
325 Columbia Turnpike
Florham Park, NJ 07932
Ph. Number: 973-660-4433

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Sutton Brook Disposal Area Superfund Site Consent Decree


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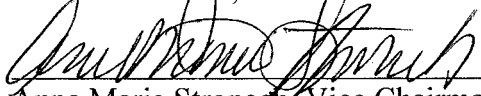
For Town of Tewksbury *


By: David Cressman

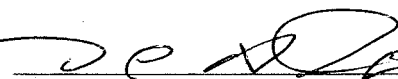
Name [print]: David Cressman
Title: Town Manager
Address: 1009 Main Street
Tewksbury, MA 02876

Town of Tewksbury Board of Selectman


Todd R. Johnson, Chairman


Anne Marie Stronach, Vice Chairman


Scott Wilson, Clerk


David H. Gay


Douglas W. Sears

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Matthew Donahue
Title: Attorney
Address: Eno, Bouley, Martin & Donahue
21 George St., 3rd Floor
Lowell, MA 01852
Ph. Number: (978) 452-8902 x113


* A separate page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR TRW Automotive U.S. LLC.

9-11-09
Date

Signature: 
Name (print): David L. Bialosky
Title: General Counsel
Address: 12001 Tech Center Drive
Livonia, MI 48154

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Scott D. Blackhurst
Title: Senior Counsel-Environment
Address: 12001 Tech Center Drive
Livonia, MI 48154
Ph. Number: 734-855-3195


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Sutton Brook Disposal Area Superfund Site Consent Decree

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FOR TutorPerini Corporation *

Sept. 23, 2009
Date

Signature: 
Name (print): Robert Band
Title: President
Address: TutorPerini Corporation
73 Mt. Wayte Ave., Framingham, Ma. 01701

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): CT Corporation
Title: _____
Address: 155 Federal Street
Suite 700
Boston, MA 02110
Ph. Number: _____

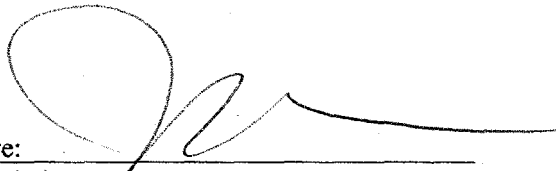
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Sutton Brook Disposal Area Superfund Site Consent Decree

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FOR Verizon New England, Inc. *

9/30/09
Date

Signature: 

Name (print): Jacquie McCormick

Title: Director-Environmental Management

Address: Verizon

700 Hidden Ridge, HQW01J05

Irving, TX 75038

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Adam P. Kahn

Title: Attorney

Address: Foley Hoag LLP

155 Seaport Blvd.

Boston, MA 02210

Ph. Number: 617-832-1000

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Sutton Brook Disposal Area Superfund Site Consent Decree

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FOR Vishay Intertechnology, Inc. for itself and on behalf
of its subsidiary Vishay BLH, Inc. f/k/a BLH
ELECTRONICS, Inc. (a Delaware Corporation)
Date 9/30/09
Signature: William M. Clancy
Name (print): WILLIAM M. CLANCY
Title: SECRETARY
Address: 63 Lancaster Ave.
Malvern, PA 19355
USA

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): Jean McCreary, Esq.
Title: _____
Address: Nixon Peabody, LLP
1100 Clinton Square
Rochester, NY 14604
Ph. Number: (585) 263-1611


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Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR W. R. Grace & Co. *

September 9, 2009
Date

Signature: 
Name (print): William M. Corcoran
Title: Vice President, Public & Regulatory Affairs
Address: W. R. Grace & Co.
7500 Grace Drive
Columbia, MD 21044

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): The Prentice-Hall Corporation System, Inc.
Title: _____
Address: 2711 Centerville Road, Suite #400
Wilmington, DE 19808
Ph. Number: (302) 636-5401

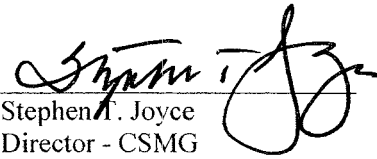
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Sutton Brook Disposal Area Superfund Site Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and the Commonwealth of Massachusetts v. Ausimont Industries, Inc., et al.*, relating to the Sutton Brook Disposal Area Superfund Site.

FOR Waste Management Disposal Services of
Massachusetts, Inc., for itself and on behalf
of predecessor entity SCA Disposal Services
of New England, Inc. – Eastern Division

9/30/09
Date

Signature: 
Name: Stephen F. Joyce
Title: Director - CSMG
Address: Waste Management
4 Liberty Lane West
Hampton, NH 03842

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name: Roy P. Giarrusso
Title: Attorney
Address: Giarrusso Norton Cooley & McGlone, PC
Marina Bay
308 Victory Road
Quincy, MA 02171
Ph. Number: 617-770-2900

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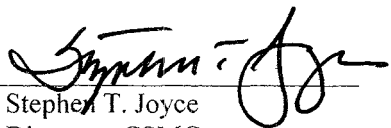
Sutton Brook Disposal Area Superfund Site Consent Decree

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FOR Waste Management of Massachusetts, Inc.,
for itself and on behalf of predecessor entity
V. Canelas Co., Inc.

9/30/09

Date

Signature: 

Name: Stephen T. Joyce

Title: Director - CSMG

Address: Waste Management
4 Liberty Lane West
Hampton, NH 03842

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name: Roy P. Giarrusso

Title: Attorney

Address: Giarrusso Norton Cooley & McGlone, PC
Marina Bay
308 Victory Road
Quincy, MA 02171

Ph. Number: 617-770-2900

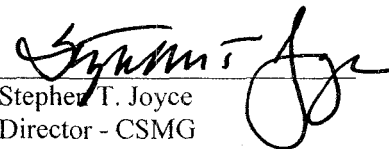
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Sutton Brook Disposal Area Superfund Site Consent Decree

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FOR Waste Management of New Hampshire, Inc.,
for itself and on behalf of predecessor entity
P&T Container Service Co., Inc.

9/30/09
Date

Signature: 
Name: Stephen T. Joyce
Title: Director - CSMG
Address: Waste Management
4 Liberty Lane West
Hampton, NH 03842

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name: Roy P. Giarrusso
Title: Attorney
Address: Giarrusso Norton Cooley & McGlone, PC
Marina Bay
308 Victory Road
Quincy, MA 02171
Ph. Number: 617-770-2900

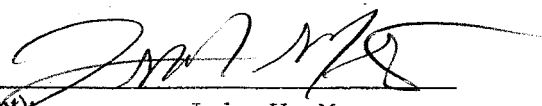
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Sutton Brook Disposal Area Superfund Site Consent Decree

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FOR Zeneca, Inc., for itself and on behalf of predecessor entity
Polyvinyl Chemicals Inc., a/k/a Polyvinyl Chemical Industries

9/22/09
Date

Signature: 

Name (print): Luke W. Mette

Title: Vice President

Address: 1800 Concord Pike
FOP3

Wilmington DE 19850

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Name (print): John A. Andreasen

Title: Attorney

Address: McGrath North Mullin & Kratz, PC LLO
First National Tower

1601 Dodge St., Ste. 3700 Omaha, NE 68102

Ph. Number: (402) 341-3070

* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States and the Commonwealth of Massachusetts.

**Remedial Design/Remedial Action Statement of Work
Sutton Brook Disposal Area Superfund Site
Tewksbury, Massachusetts
September 2009**

1. Introduction and Purpose

This Remedial Design/Remedial Action (RD/RA) Statement of Work (SOW) defines the response activities and deliverable obligations that the Performing Settling Defendants shall be obligated to perform in order to implement the Work required under the Consent Decree for the Sutton Brook Disposal Area Superfund Site (the Site), in Tewksbury, Massachusetts. The activities and obligations described in this SOW are based upon the United States Environmental Protection Agency's (EPA) Record of Decision (ROD) for the Site, dated September 28, 2007.

2. Definitions

All definitions provided in the Consent Decree are incorporated herein by reference. In addition, the following definitions shall apply to this SOW:

2.1. "Design" or "Remedial Design" shall additionally mean an identification of the technology and its performance and operational specifications, in accordance with all applicable federal, state, and local laws, including, but not limited to:

2.1.1. all computations used to size units, determine the appropriateness of technologies, and the projected effectiveness of the system;

2.1.2. materials handling and system layouts for any excavation and treatment of soils, if required, the extraction and treatment of groundwater, or in-situ treatment of soil and groundwater, if required, and the decontamination and demolition of facilities to include size and location of units, treatment rates, location of electrical equipment and pipelines, and treatment of effluent discharge areas;

2.1.3. scale drawings of all system layouts identified above and including, but not limited to, excavation cross-sections, and well cross-sections;

2.1.4. quantitative analysis demonstrating the anticipated effectiveness of the Remedial Design to achieve the Performance Standards;

2.1.5. technical specifications which detail the following:

2.1.5.1. size and type of each major component; and

2.1.5.2. required performance criteria of each major component;

2.1.6. description of the extent of ambient air monitoring including equipment, monitor locations, and data handling procedures; and

2.1.7. description of access, land easements and/or other institutional controls required, to be supplied with the construction plans and specifications.

2.2. “Downgradient Groundwater Area” or “DGGA” shall mean the groundwater located hydraulically downgradient of the FDDA and Landfill Lobes with contaminants detected in excess of Groundwater Cleanup Levels. The DGGA is generally located west of the Southern Lobe (to the south of Sutton Brook), and west and south of the FDDA and Northern Lobe (to the north of Sutton Brook).

2.3. “Former Drum Disposal Area” or “FDDA” shall mean the area adjacent to the western edge of the Northern Lobe where drums and associated contamination and debris were removed. This area has been identified in the Risk Assessment as containing contamination in excess of site-specific soil cleanup levels as set forth in Section 5.1 of this SOW.

2.4. “Garage Storage Area” or “GSA” shall mean the area located in the northernmost portion of the Site which consists of the former residence and garage, as well as an open storage area. This area has been identified in the Risk Assessment as containing contamination in excess of site-specific soil cleanup levels as set forth in Section 5.1 of this SOW.

2.5. “Landfill Lobes” shall mean the Northern Lobe and the Southern Lobe.

2.6. “Monitored Natural Attenuation” or “MNA” shall mean the reduction of contaminants in groundwater through natural mechanisms in the aquifer underlying the Site. MNA will be implemented, operated and evaluated in accordance with *Use of Monitored Natural Attenuation at Superfund, RCRA Corrective Action, and Underground Storage Tank Sites* (OSWER Directive 9200.4-17P, April 21, 1999) and other guidance accepted by EPA.

2.7. “Northern Lobe” shall mean the portion of the landfill located to the north of Sutton Brook and comprising approximately 30 acres and an estimated 1.9 million cubic yards. It is generally bounded by the former rail bed to the north, Sutton Brook and associated tributaries and wetlands to the east and south, and the FDDA to the west.

2.8. “Source Areas” shall mean the Landfill Lobes, the FDDA, and the GSA.

2.9. “Southern Lobe” shall mean the portion of the landfill located to the south of Sutton Brook and comprising approximately 10 acres and an estimated 0.3 million cubic yards.

3. Selected Remedy

The ROD describes the remedy selected by EPA for the Site. The major components of the remedy are as follows:

- Excavation of contaminated soils exceeding site-specific cleanup levels from the FDDA and the GSA;
- Excavation of contaminated soils and sediments exceeding site-specific cleanup levels from a portion of Sutton Brook between the two Landfill Lobes;
- Consolidation of excavated soils and sediments along with other debris adjacent to the Landfill Lobes into the Landfill Lobes;
- Construction of a low permeability cap over both Landfill Lobes, including systems to collect and manage gases and storm water from the Landfill Lobes;
- Construction of a vertical barrier to intercept groundwater from the Southern Lobe to prevent it from entering Sutton Brook;
- Collection and treatment of contaminated groundwater from an area west of the Southern Lobe;
- Monitored natural attenuation of areas of groundwater contamination not captured by the extraction system, with a contingency to expand the area of active groundwater remediation, if necessary;
- Institutional controls such as deed restrictions and/or local ordinances to prevent unacceptable exposures to wastes left in place and to restrict exposure to contaminated groundwater until Groundwater Cleanup Levels are met; and
- Long-term groundwater, surface water, and sediment monitoring, and periodic five-year reviews of the remedy.

4. Remedial Action Objectives

The Remedial Action Objectives (RAOs), as defined in the ROD, for the selected remedy are:

- Prevent direct contact/ingestion of landfill contents for the protection of human and ecological receptors;
- Prevent direct contact and ingestion of residual levels of semi-volatile organic compounds (SVOCs) and volatile organic compounds (VOCs) in

soils in the FDDA and metals and SVOCs in soils in the GSA above applicable human health or ecological based criteria;

- Prevent direct exposure to impacted surface water and sediments in those areas of the wetlands and brook determined by the ecological risk assessment;
- Prevent contaminant migration via surface run-off and erosion through the Source Areas to surface water or sediments in the brook or wetlands for the protection of ecological receptors;
- Control landfill gas;
- For the protection of potential human receptors, reduce contaminant leaching via infiltration through the Source Areas with subsequent migration to groundwater at concentrations in excess of State or Federal Maximum Contaminant Levels (MMCLs or MCLs) and applicable groundwater quality standards. For contaminants where no State or Federal drinking water standard has been established, reduce leaching such that groundwater concentrations will not exceed human health risk-based levels (i.e., greater than the carcinogenic target risk range of 10^{-4} to 10^{-6} or non-carcinogenic target organ Hazard Index of 1);
- For the protection of potential human receptors, prevent exposure to groundwater impacted by site contaminants at concentrations that exceed State or Federal drinking water standards (MMCLs or MCLs). For contaminants where no State or Federal drinking water standard has been established, prevent exposure to concentrations which exceed human health risk-based levels (i.e., greater than the carcinogenic target risk range of 10^{-4} to 10^{-6} or non-carcinogenic target organ Hazard Index of 1). For contaminants that are a concern with respect to vapor intrusion, prevent exposure to indoor air concentrations that are not protective of human health;
- Limit the discharge of impacted groundwater to Sutton Brook to prevent site contaminants in surface water or sediments from exceeding ecological based criteria or unacceptable levels of risk to ecological receptors; and
- Prevent migration of contaminants off-site via groundwater or surface water at levels in excess of Federal and/or State standards/criteria or unacceptable levels of risk to human or ecological receptors.

5. Performance Standards

This section presents the overall Performance Standards for the remedy.

The Performing Settling Defendants shall design, construct, operate, monitor, and maintain the Remedial Action in compliance with all applicable or relevant and appropriate requirements (ARARs) identified in the ROD. In addition, the Performing Settling Defendants shall also attain the following Performance Standards at the Site:

5.1. Soil Performance Standards

5.1.1. Garage and Storage Area. In accordance with the ROD, the Performing Settling Defendants shall excavate soils contaminated in excess of the site-specific cleanup levels set forth in the following table. Compliance with these soil performance standards will be demonstrated consistent with the methods described in the Demonstration of Compliance Plan prepared pursuant to Section 6.1.9 of this SOW. Excavated areas will be restored with approved fill material to the extent needed.

Garage and Storage Area (Human Health)	
Contaminant	Cleanup Level (mg/kg)
Benzo(a)anthracene	4.4
Benzo(a)pyrene	0.44
Benzo(b)fluoranthene	4.4
Benzo(k)fluoranthene	44
Dibenz(a,h)anthracene	0.44
Indeno(1,2,3-cd)pyrene	4.4

Garage and Storage Area (Ecological)	
Contaminant	Cleanup Level (mg/kg)
Di-n-octylphthalate	0.4
Lead	65
Zinc	190

5.1.2. Former Drum Disposal Area. In accordance with the ROD, the Performing Settling Defendants shall excavate soils contaminated in excess of site-specific cleanup levels as set forth in the following table. Compliance with these soil performance standards will be demonstrated consistent with the methods described in the Demonstration of Compliance Plan prepared pursuant to Section 6.1.9 of this SOW. Excavated areas will be restored with approved fill to the extent needed.

Former Drum Disposal Area (Ecological)	
Contaminant	Cleanup Level (mg/kg)
1,2,4-Trimethylbenzene	1.1
1,3,5-Trimethylbenzene	1.1
bis(2-Ethylhexyl)phthalate	2.3
Di-n-octylphthalate	0.1
Ethylbenzene	1.1
Naphthalene	1
Toluene	1.1
Xylenes (total)	1.1

5.2. Groundwater Performance Standards

Cleanup levels have been established for groundwater (Groundwater Cleanup Levels) for the following contaminants:

Contaminant	Cleanup Level (ug/L)
1,1,2-Trichloroethane	5
1,2-Dichloroethane	5
1,2-Dichloropropane	5
1,4-Dichlorobenzene	75
1,4-Dioxane	4
Acrylonitrile	0.05
Benzene	5
Carbon Tetrachloride	5
Chloroform	80
Methylene chloride	5
Tetrachloroethene	5
Trichloroethene	5
Vinyl Chloride	2
alpha-BHC	0.008
Aroclor-1254	0.5
bis(2-Ethylhexyl)phthalate	6
N-Nitrosodi-n-butylamine	0.003
N-Nitrosopyrrolidine	0.03
o-Toluidine	0.2
1,1,1-Trichloroethane	200
1,1-Dichloroethane	360
1,1-Dichloroethene	7
1,2-Dichloroethene (total)	100
2-Butanone	4000
4-Methyl-2-pentanone	800
Acetone	5600
cis-1,2-Dichloroethene	70
Ethyl methacrylate	260
Ethylbenzene	700
n-Propylbenzene	52
Styrene	100
Tetrahydrofuran	227
Toluene	1000
Xylenes (total)	10000
2-Methylphenol	540
3-/4-Methylphenol	470
Naphthalene	100

Contaminant (groundwater)	Cleanup Level (ug/L)
Phenol	2000
Pyridine	9
Antimony	6
Arsenic	10
Beryllium	4
Cadmium	5
Chromium	100
Lead	15
Manganese	300
Selenium	50
Silver	100
Thallium	2
Zinc	2000

At the time that these Groundwater Cleanup Levels, and any cleanup levels identified by any requirements that are promulgated or modified after ROD signature and determined by EPA pursuant to 40 C.F.R. § 300.430(f)(ii)(B)(1) to be applicable or relevant and appropriate and necessary to ensure that the remedy is protective of human health and the environment, have been achieved and have not been exceeded for a period of three consecutive years, a risk assessment shall be performed on all residual groundwater contamination to determine whether the Remedial Action is protective. This risk assessment of the residual groundwater contamination shall follow EPA procedures and will assess the cumulative carcinogenic and non-carcinogenic risks posed by all contaminants of concern (including but not limited to the contaminants identified in the above table) via ingestion of groundwater and inhalation of VOCs from domestic water usage. If, after review of the risk assessment, EPA determines that the Remedial Action is not protective, the groundwater component of the Remedial Action shall continue until either protective levels are achieved, and are not exceeded for a period of three consecutive years, or until the remedy is otherwise deemed protective or is modified. These protective residual levels shall constitute the final Groundwater Cleanup Levels and shall be considered performance standards for this Remedial Action.

The point of compliance for the Groundwater Cleanup Levels is the edge of the Landfill Lobes. Groundwater throughout the Site at the edge of and beyond the point of compliance shall meet the final Groundwater Cleanup Levels.

5.2.1. Monitored Natural Attenuation.

With respect to areas of groundwater contamination where the selected groundwater remedy is MNA with a contingency for active groundwater

remediation (the DGGA, the FDDA, and at the edge of the Northern Lobe), the following criteria are among those that will be considered by EPA to determine whether MNA is adequately addressing groundwater contamination:

- Contaminant concentrations in groundwater at specified locations exhibit an increasing trend not originally predicted during remedy selection;
- Near-source wells exhibit large concentration increases indicative of a new or renewed release;
- Contaminants are identified in monitoring wells located outside of the original plume boundary (the limits at the time of the ROD) [see figures E-9, E-10, E-11 and E-12 in the ROD];
- Contaminant concentrations are not decreasing at a sufficiently rapid rate to meet the RAOs;
- Changes in land and/or groundwater use will adversely affect the protectiveness of the MNA remedy;
- Changes in environmental conditions occur that may reduce the efficacy of any natural attenuation processes;
- Potentially toxic and/or mobile transformation products are identified; and
- Unacceptable impacts to downgradient receptors are identified.

The Groundwater Natural Attenuation Evaluation Plan (refer to Section 7.11), will describe in detail the form and intended methods which will be used to gather monitoring data and evaluate the MNA criteria.

5.3. Surface Water Performance Standards

The Performing Settling Defendants shall attain the following Surface Water Cleanup Levels in the Upper Sutton Brook-Site Channel. Compliance with these surface water performance standards will be demonstrated consistent with the methods described in the Demonstration of Compliance Plan prepared pursuant to Section 6.1.9 of this SOW.

Location	Contaminant	Cleanup Level (ug/L)
Upper Sutton Brook – Site Channel		
	4,4'-DDT	0.001
	Ethylbenzene	7.3
	Toluene	9.8
	Xylenes (total)	13

5.4. Sediment Performance Standards

The Performing Settling Defendants shall excavate contaminated sediments in Sutton Brook (between the Landfill Lobes) exceeding the following cleanup levels and consolidate the excavated sediments into the Landfill Lobes. Compliance with these sediment performance standards will be demonstrated consistent with the methods described in the Demonstration of Compliance Plan prepared pursuant to Section 6.1.9 of this SOW.

Location	Contaminant	Cleanup Level (mg/kg)
Upper Sutton Brook – Site Channel		
	1,2,4-Trimethylbenzene	1.3
	1,3,5-Trimethylbenzene	1.2
	2-Methylphenol	0.1
	3-/4-Methylphenol	0.6
	4-Methyl-2-pentanone	0.04
	Acetone	0.07
	Carbon Disulfide	0.001
	Chloroethane	0.03
	Ethylbenzene	0.09
	Toluene	0.06
	Xylenes (total)	0.13

5.5. Cap Performance Standards

The selected remedy includes capping of both the Northern and Southern Lobes with a low permeability RCRA Subtitle C waste cover system. Prior to capping, miscellaneous debris piles adjacent to the landfill will be consolidated into the area to be capped. The Northern and Southern Lobe landfill caps shall be designed and constructed to comply with:

RCRA Subtitle C - Closure and Post-Closure (40 C.F.R. Subpart G, §§ 264.111 and 264.117);

RCRA Subtitle C - Landfills (40 C.F.R. Subpart N, § 264.310); and

Mass. Hazardous Waste Regulations – Landfills (310 C.M.R. § 30.633).

5.6. Performance Standards for the Vertical Barrier

The Performing Settling Defendants shall construct an impermeable vertical barrier along a portion of the Southern Lobe to limit the discharge of impacted groundwater to Sutton Brook to prevent site contaminants in surface water or sediment from exceeding site-specific risk-based criteria. The intent of the installation of the vertical barrier is for groundwater contaminants to migrate to the west, through the “Area for Focused Groundwater Treatment,” which is conceptually located on Figure L-1 of the ROD. The base of the barrier will be “tied-in” to an impermeable, or low-permeability layer (e.g., till or bedrock).

5.7. Performance Standards for Institutional Controls

Institutional controls will be implemented to prohibit excavation of the Landfill Lobes, prohibit use of the groundwater underneath the Landfill Lobes, restrict the future use of and access to the Landfill Lobes, and restrict the future use of groundwater throughout the Site until Groundwater Cleanup Levels are met at the edge of and beyond the point of compliance. Performing Settling Defendants shall implement the Institutional Controls required pursuant to Section IX of the Consent Decree and the Institutional Controls Plan required under Section 6.1.7.3 of this SOW.

6. Remedial Design

The Performing Settling Defendants shall develop a final design for the remedy described in the ROD and this SOW that meets the Performance Standards specified in Section 5 of this SOW. Section 6.1 of this SOW describes the responsibilities of the Performing Settling Defendants for submitting deliverables during the design. Section 6.2 of this SOW describes the responsibilities of the Performing Settling Defendants for conducting Design Project Meetings.

The Parties acknowledge that the Performing Settling Defendants believe that constructing the remedy using a haul road, which the Performing Settling Defendants may develop in conjunction with a new Interstate 93 interchange (proposed jointly by the U.S. Department of Transportation Federal Highway Administration and the Massachusetts Highway Department) near the Site, is expected to reduce the cost of the Work, save fuel and lead to fewer greenhouse gas emissions, and benefit the local community by improving traffic volume and safety, and reducing related noise, dust, and air emissions the public will experience during construction. To the extent possible, consistent with EPA’s obligation to protect human health and the environment by assuring that the Work proceeds in a timely manner, EPA shall permit the remedy to be constructed using such haul road.

6.1. Deliverables

The Performing Settling Defendants shall submit the following deliverables to EPA and Massachusetts Department of Environmental Protection (MassDEP), consistent with the Consent Decree, during the Remedial Design. Except where expressly stated otherwise in this SOW, each deliverable shall be subject to review and approval, modification or disapproval by EPA, after reasonable opportunity for review and comment by MassDEP, in accordance with Section XI of the Consent Decree (EPA Approval of Plans and Other Submissions).

6.1.1. Design Schedule

Within twenty-one (21) days of the selection of the Supervising Contractor in accordance with Paragraph 10 of the Consent Decree, the Performing Settling Defendants shall submit a Design Schedule to EPA and MassDEP. The Design Schedule shall identify and indicate the dates of performance of all major milestones necessary for completion of the remedial design, including any necessary fieldwork and all required deliverables.

6.1.2. Design Progress Reports

The Performing Settling Defendants shall submit Design Progress Reports to EPA and MassDEP by the 10th day of each month beginning with the month after selection of the Supervising Contractor, and shall continue until the completion of the Remedial Design, unless otherwise determined by EPA. The reports shall summarize all activities that have been conducted in the month preceding the report, and all activities planned for the two months following the report. The Design Progress Reports shall also identify any problems encountered or changes to the schedule (and the resolution of any problems previously identified), and shall summarize the results of sampling, tests and all other data received by the Performing Settling Defendants.

6.1.3. Project Operations Plan

In accordance with the approved or modified Design Schedule, the Performing Settling Defendants shall submit to EPA and MassDEP a Project Operations Plan (POP). This POP shall be prepared in support of all fieldwork to be conducted according to the Remedial Design Work Plan and shall include, but not be limited to, the following:

6.1.3.1. Site Management Plan (SMP);

6.1.3.2. Sampling and Analysis Plan (SAP) which includes: a Quality Assurance Project Plan (QAPP) and a Field Sampling Plan (FSP); and

6.1.3.3. Health and Safety Plan (HSP).

The POP shall be prepared in accordance with Attachment A to this SOW.

6.1.4. Environmental Monitoring and Reporting Work Plan

In accordance with the approved or modified Design Schedule, the Performing Settling Defendants shall submit to EPA and MassDEP an Environmental Monitoring and Reporting Work Plan which shall describe in detail all activities that will be conducted to evaluate the effect of the source control remedy on concentrations of contaminants in groundwater and surface water. The monitoring program shall commence with the first sampling event occurring no later than one (1) year after submission of the Design Schedule required under Section 6.1.1 of this SOW, and shall continue until the start of Operation and Maintenance. The Environmental Monitoring and Reporting Work Plan shall address groundwater and surface water contaminant concentrations, contaminant migration, groundwater flow direction, and MNA indicator data and shall include but not be limited to the following:

6.1.4.1. A schedule of all activities required for monitoring; and

6.1.4.2. A Sampling and Analysis Plan (SAP) which includes:

6.1.4.2.1. A Quality Assurance Project Plan (QAPP);

6.1.4.2.2. A Field Sampling Plan (FSP); and

6.1.4.2.3. A description of the statistical analysis, modeling and/or other data interpretation techniques to be used.

The Performing Settling Defendants shall prepare this Environmental Monitoring and Reporting Work Plan in accordance with Attachment A to this SOW.

6.1.5. Remedial Design Work Plan

In accordance with the approved or modified Design Schedule, the Performing Settling Defendants shall submit to EPA and MassDEP a

Remedial Design Work Plan which includes a plan for the design of the remedy. The Remedial Design Work Plan shall summarize all activities to be undertaken in connection with the Remedial Design, and shall detail the proposed scope of deliverables for the Remedial Design. The Remedial Design Work Plan shall be consistent with the ROD, this RD/RA SOW, and EPA's RD/RA guidance in effect at the time of submittal.

6.1.5.1. The Remedial Design Work Plan shall contain detailed descriptions of all activities to be undertaken in connection with any pre-design investigations and design activities necessary for the design and implementation of the Remedial Action, including but not limited to:

6.1.5.1.1. Investigations to identify sources of available capping materials, as appropriate;

6.1.5.1.2. Review of previous investigations to verify whether there is sufficient existing subsurface information, including engineering material characteristics, to design the selected remedy, and if not, investigations to collect such information;

6.1.5.1.3. Evaluation of wetland protection/restoration construction alternatives for those areas that will be impacted as a result of the Remedial Action;

6.1.5.1.4. A field survey to delineate property boundaries, utilities, rights-of-way, and easements as necessary to establish necessary institutional controls; and

6.1.5.1.5. A title examination and related title work as required in Section IX of the Consent Decree.

6.1.6. Landfill Cover System Design

In accordance with the approved or modified Design Schedule, the Performing Settling Defendants shall complete activities necessary to identify a proposed landfill cover system that meets the RAOs and ARARs as set forth in the ROD. This deliverable will include a qualitative and quantitative analysis demonstrating that the proposed landfill cover system meets the applicable requirements for the Site.

Following approval or modification of the cover system, the conceptual design phase will commence.

6.1.7. Conceptual Design Phase (30% Remedial Design)

In accordance with the approved or modified Design Schedule, the Performing Settling Defendants shall complete all activities in the Conceptual Design Phase, which shall consist of the Conceptual Design Package, including pre-design investigations, a constructability review, the Conceptual Design, and an Institutional Controls Plan as described below.

6.1.7.1. The Performing Settling Defendants shall submit to EPA and MassDEP a Conceptual Design at the 30% Remedial Design stage to include, at a minimum, the following:

6.1.7.1.1. Report presenting the results of pre-design activities, if any;

6.1.7.1.2. Basis of design/assumptions;

6.1.7.1.3. 30% Remedial Design plans, drawings, sketches, calculations, and technical specifications;

6.1.7.1.4. Project delivery strategy;

6.1.7.1.5. Draft bid documents;

6.1.7.1.6. Regulatory compliance statement (statement of compliance with ARARs); and

6.1.7.1.7. Initial evaluation of cost-effective methods to reduce energy and fuel use and emissions, including greenhouse gasses, in activities and materials used to implement the Remedial Action, including Operation and Maintenance, which methods the Performing Settling Defendants shall consider incorporating into the Remedial Design. Pursuant to this Section and Section 6.1.8.1.10, the Performing Settling Defendants shall be required to evaluate only methods that have the potential to result in meaningful reductions to energy and fuel use and emissions.

6.1.7.2. The Performing Settling Defendants shall conduct and report on a constructability review which evaluates the suitability of the project and its components in relation to the Site. This review shall include consideration of the potential for an increase in the volume of groundwater requiring treatment (in the event that the Contingent Remedy is implemented) and the relative merits of a single treatment facility versus multiple treatment facilities.

6.1.7.3. The Performing Settling Defendants shall submit to EPA and MassDEP an Institutional Controls Plan. This plan shall present the details for implementation of Institutional Controls (IC) and IC Compliance Monitoring. The IC Plan shall include at a minimum:

6.1.7.3.1. If necessary, an evaluation of the long-term effectiveness and enforceability of various forms of Institutional Controls, including but not limited to deed restrictions, easements, and/or other legal or administrative measures, either individually or in combination, and a recommendation for the appropriate form of Institutional Controls based on the evaluation;

6.1.7.3.2. Plans for drafting ICs, including without limitation plans for satisfying all requirements of Section IX of the Consent Decree;

6.1.7.3.3. Plans and schedule for implementation of ICs;

6.1.7.3.4. Plans for IC Compliance Monitoring, including but not limited to schedule for inspections, required document review prior to inspection, inspection checklist, inspection reporting;

6.1.7.3.5. Plan and schedule for initiating IC Compliance Monitoring; and

6.1.7.3.6. Plans for financial assurance for long-term IC Compliance Monitoring.

6.1.8. Remedial Design Completion Phase

In accordance with the approved or modified Design Schedule, the Performing Settling Defendants shall complete all activities in the Remedial Design Completion Phase, which shall consist of the Pre-Final and Final Design Packages.

6.1.8.1. Pre-Final Design Package at the 95% Remedial Design stage to include, at a minimum, the following:

6.1.8.1.1. All revisions required by EPA based upon EPA and MassDEP comments on the Conceptual Design Package (30% Remedial Design);

6.1.8.1.2. Basis of design/assumptions, noting any changes;

6.1.8.1.3. 95% Remedial Design plans, drawings, sketches, calculations, and technical specifications;

6.1.8.1.4. Draft RA Work Plan and RA POP;

6.1.8.1.5. Regulatory compliance statement (statement of compliance with ARARs);

6.1.8.1.6. Final bid documents;

6.1.8.1.7. Draft Operation and Maintenance (OM) Plan to ensure long-term continued effectiveness of the remedy and conformance with the Performance Standards. This plan shall include at a minimum, the following:

6.1.8.1.7.1. a description of normal Operation and Maintenance;

6.1.8.1.7.2. a description of potential operational problems;

6.1.8.1.7.3. a description of routine monitoring and analysis;

6.1.8.1.7.4. a description of routine maintenance activities;

6.1.8.1.7.5. a description of contingency operation and monitoring;

6.1.8.1.7.6. an operational safety plan;

6.1.8.1.7.7. a description of equipment;

6.1.8.1.7.8. annual Operation and Maintenance budget;

6.1.8.1.7.9. record keeping and reporting requirements;

6.1.8.1.7.10. a well maintenance budget; and

6.1.8.1.7.11. post-construction inspection schedules and provisions for implementing such activities;

6.1.8.1.8. IC Plan Supplement to update the 30% Remedial Design, including:

6.1.8.1.8.1. a draft grant, where applicable, specific to the appropriate property and ownership;

6.1.8.1.8.2. for any grant, a draft plan of restricted areas, where timely;

6.1.8.1.8.3. a draft title certification;

6.1.8.1.8.4. draft IC Compliance Monitoring Plan; and

6.1.8.1.8.5. a draft IC financial assurance plan;

6.1.8.1.9. 50% Remedial Design Package for the groundwater remedy component adjacent to the Southern Lobe; and

6.1.8.1.10. Final evaluation of cost-effective methods to reduce energy and fuel use and emissions, including greenhouse gasses, in activities and materials used to implement the Remedial Action, including Operation and Maintenance, which methods the Performing Settling Defendants shall consider incorporating into the Remedial Design.

6.1.8.2. Pre-Final Design Package at the 95% Remedial Design stage for the groundwater remedy component adjacent to the Southern Lobe to be submitted within one hundred twenty (120) days after the substantial completion of construction of the vertical barrier adjacent to the Southern Lobe, as determined by EPA's concurrence with the Performing Settling Defendants' vertical barrier substantial completion determination. This package will include the following:

6.1.8.2.1. Revisions required by EPA to the 50% Remedial Design package;

6.1.8.2.2. Basis of design/assumptions, noting any changes;

6.1.8.2.3. 95% Remedial Design plans, drawings, sketches, calculations, and technical specifications;

6.1.8.2.4. Draft RA Work Plan and RA POP;

6.1.8.2.5. Regulatory compliance statement (statement of compliance with ARARs);

6.1.8.2.6. Bid documents; and

6.1.8.2.7. Draft Operation and Maintenance (OM) Plan to ensure long-term continued effectiveness of the remedy and conformance with the Performance Standards.

6.1.8.3. Final Design Package at the 100% Remedial Design stage to include, at a minimum, the following:

6.1.8.3.1. All revisions required by EPA based upon EPA and MassDEP review of the information provided in the Pre-Final Design Package (95% Remedial Design);

6.1.8.3.2. Revised basis of design/assumptions, noting any changes;

6.1.8.3.3. 100% Remedial Design plans, drawings, sketches, calculations, and technical specifications;

6.1.8.3.4. Draft Final RA Work Plan, and RA POP; and

6.1.8.3.5. Revised constructability review, noting any changes.

6.1.8.4. Final Design Package (100% Remedial Design) for the groundwater remedy component adjacent to the Southern Lobe to be prepared and submitted within sixty (60) days after EPA approval or modification of the Pre-Final Design Package (95% Remedial Design) for the groundwater remedy component adjacent to the Southern Lobe.

6.1.9. Demonstration of Compliance Plan

In accordance with the approved or modified Design Schedule, the Performing Settling Defendants shall submit to EPA and MassDEP the Demonstration of Compliance Plan. The Demonstration of Compliance Plan shall describe in detail all activities that will be conducted to comply with and/or to demonstrate compliance with all performance standards, including cleanup levels and ARARs. For ARARs, the Demonstration of Compliance Plan shall:

- 6.1.9.1.1.** Specify the statute;
- 6.1.9.1.2.** Specify the citation of the ARAR;
- 6.1.9.1.3.** Identify if the ARAR is state or federal;
- 6.1.9.1.4.** Summarize the requirements of the ARAR;
- 6.1.9.1.5.** Specify in detail all activities that will be conducted to comply with the ARAR; and,
- 6.1.9.1.6.** Specify in detail all activities that will be conducted to demonstrate compliance with the ARAR.

6.1.9.2. When sampling and analysis is conducted to demonstrate compliance, the Demonstration of Compliance Plan shall specify:

- 6.1.9.2.1.** Sampling locations;
- 6.1.9.2.2.** Sampling frequency;
- 6.1.9.2.3.** Sampling methods;
- 6.1.9.2.4.** Analytical methods;
- 6.1.9.2.5.** Quality assurance and quality control activities; and
- 6.1.9.2.6.** Statistical analysis and/or modeling and/or other data interpretation techniques.

6.1.9.3. The Demonstration of Compliance Plan shall also include all of the construction quality assurance/quality control testing and documentation required to demonstrate that the remedy was properly implemented. The construction quality

assurance/quality control component in the Demonstration of Compliance Plan shall include, at a minimum:

6.1.9.3.1. Checklists for establishing that the required tests and inspections were performed;

6.1.9.3.2. Standard operation procedures for all field and laboratory tests;

6.1.9.3.3. The quality assurance and quality control plan for all field and laboratory tests; and, where necessary; and

6.1.9.3.4. Erosion and sediment control plans.

6.2. Design Project Meetings

Unless otherwise determined by EPA, Design Project Meetings will take place at EPA offices in Boston, Massachusetts.

6.2.1. Conceptual Design Meeting

In accordance with the approved or modified Design Schedule, the Performing Settling Defendants shall hold a meeting to discuss the Conceptual Design. The Performing Settling Defendants shall present and discuss, at a minimum, the results of any pre-design activities; the design criteria; the project delivery strategy; conceptual sketches; calculations; an outline of the required technical specifications; a preliminary construction schedule; organizational roles; and compliance with ARARs. The Performing Settling Defendants shall document meeting minutes and submit responses to EPA and MassDEP comments in a written letter.

6.2.2. Other Design Meetings

The Performing Settling Defendants shall hold meetings appropriate to discuss specific design or deliverable issues. Such meetings shall be held in accordance with the approved or modified Design Schedule, or as agreed upon by EPA, MassDEP and the Performing Settling Defendants.

7. Remedial Action

The Remedial Action activities shall include, but are not limited to: (a) submission of final RA Work Plan; (b) pre-construction conference; (c) commencement of construction; (d) meetings during construction; (e) RA Progress Reports; (f) development and implementation of Operation and Maintenance Plan and Post-

Construction Monitoring Plan; (g) final construction inspection; and (h) final remedial construction report. The Performing Settling Defendants shall submit to EPA and MassDEP any required deliverables as stated herein for each of these Remedial Action activities. Each deliverable shall be subject to review and approval or modification by EPA, after reasonable opportunity for review and comment by MassDEP, in accordance with Section XI of the Consent Decree, EPA Approval of Plans and Other Submissions.

7.1. Remedial Action Work Plan and Revised POP

Within thirty (30) days of EPA approval or modification of each Final Design Package (100% Remedial Design) (Sections 6.1.8.3 and 6.1.8.4 above), the Performing Settling Defendants shall submit to EPA and MassDEP a final Remedial Action Work Plan and schedule for implementing the Remedial Action and associated activities, consistent with the approved or modified Remedial Design. Activities contained or described in their entirety in other plans may be incorporated into the Remedial Action (RA) Work Plan. The RA Work Plan shall contain, at a minimum:

7.1.1. A description of the activities necessary to implement all components of the Remedial Action, in accordance with the Remedial Design, the SOW, the Consent Decree and the ROD, including, but not limited to, the following:

7.1.1.1. award of project contracts, including any agreements with off-site treatment and/or disposal facilities;

7.1.1.2. contractor mobilization/site preparation, including construction of necessary utility hookups;

7.1.1.3. community communications plan, including, communication with local officials and affected citizens regarding hours of construction, truck routes, and community safety issues; and

7.1.1.4. construction, and quality assurance/quality control testing of all components of the remedy.

7.1.2. A revised POP, containing the elements listed in Section 6.1.3 above, shall be prepared in support of all field work to be conducted according to the approved or modified RA Work Plan.

7.1.3. A detailed schedule for completing the activities identified in Section 7 including the required deliverables and reporting requirements, and an identification of milestone events in the performance of the Remedial Action.

7.2. Pre-construction Conference

Within twenty-one (21) days of receiving EPA's approval or modification of the RA Work Plan, the Performing Settling Defendants shall hold a Pre-Construction Conference with EPA, MassDEP and their respective representatives.

7.3. Commencement of Construction

7.3.1. Within thirty (30) days of receiving EPA's approval or modification of the Remedial Action Work Plan or such other date set forth in the schedule contained therein, the Performing Settling Defendants shall commence the Remedial Action activities as specified in such Remedial Action Work Plan.

7.3.2. If, during the construction of the Remedial Action, conditions warrant modification of the design, construction, and/or schedules, the Performing Settling Defendants may propose such design, construction or schedule modifications. Following approval or modification by EPA, after reasonable opportunity for review and comment by MassDEP, the Performing Settling Defendants shall implement the design or construction modifications required.

7.4. Meetings During Construction

7.4.1. During the construction period, the Performing Settling Defendants and the Supervising Contractor shall meet monthly with EPA and MassDEP regarding the progress and details of construction. Conference calls may be substituted for meetings upon approval of EPA.

7.4.2. The Performing Settling Defendants and/or EPA may schedule additional meetings as reasonably necessary during construction.

7.5. RA Progress Reports

The Performing Settling Defendants shall submit RA Progress Reports to EPA and MassDEP no later than the 10th day of each month beginning with the month after submission of the final RA Work Plan. The reports shall summarize all activities that have been conducted in the month preceding the report, and all activities planned for the two months following the report. The RA Progress Reports shall also identify any problems encountered or changes to the schedule (and the resolution of any problems previously identified), and shall summarize the results of sampling, tests and all other data received by the Performing Settling Defendants.

7.6. Operation and Maintenance Plan and Post-Construction Monitoring Plan

7.6.1. Sixty (60) days prior to the anticipated date of the Final (Pre-Certification) Construction Inspection, the Performing Settling Defendants shall submit to EPA and MassDEP: a) an Operation and Maintenance Plan to update the Draft Operation and Maintenance Plan in the 95% Remedial Design to ensure the long-term, continued effectiveness of each component of the Remedial Action; and b) a Post-Construction Monitoring Plan to monitor achievement and conformance with the Performance Standards and evaluate the protectiveness of the remedy. These plans shall include, at a minimum, the following:

7.6.1.1. Operation and Maintenance Plan

7.6.1.1.1. a periodic evaluation of the stability/condition of all cover systems;

7.6.1.1.2. a description of normal operations and maintenance of all components of the remedy;

7.6.1.1.3. measures to prevent unauthorized access through fences;

7.6.1.1.4. an operational safety plan;

7.6.1.1.5. a description of major equipment;

7.6.1.1.6. operation and maintenance budget;

7.6.1.1.7. record keeping and reporting requirements;

7.6.1.1.8. a well maintenance program including, at a minimum, the following:

7.6.1.1.8.1. a provision for prompt and proper abandonment, as appropriate, of wells used during earlier activities which are currently unusable or which become unusable during the Remedial Action or Operation and Maintenance activities;

7.6.1.1.8.2. a provision for inspection, continued maintenance and repair, if necessary, of all wells used during

earlier activities and not abandoned;
and

7.6.1.1.8.3. a provision for continued maintenance or abandonment of wells used during earlier activities and additional wells used during the Remedial Design, Remedial Action, and Operation and Maintenance phases;
and

7.6.1.1.9. site closure and post-closure monitoring:

7.6.1.1.9.1. a cost estimate for post-closure care consistent with 40 C.F.R. Part 264 and 310 C.M.R. § 19.051;

7.6.1.1.9.2. establishment of a financial assurance mechanism for post-closure care consistent with 40 C.F.R. Part 264; and

7.6.1.1.9.3. post-closure activities schedule consistent with 40 C.F.R. Part 264 and 310 C.M.R. § 19.142.

7.6.1.2. Post-Construction Monitoring Plan

The Post-Construction Monitoring Plan shall be implemented as required under Section 7.8 below.

7.6.1.2.1. Groundwater Monitoring

Groundwater Monitoring shall be designed to evaluate the effect of the source control remedy on concentrations of contaminants in groundwater as well as to evaluate the effectiveness of the MNA remedy in addressing groundwater at the Site. The plan shall be consistent with the requirements of 40 C.F.R. § 264.97, and shall include at a minimum, the following:

7.6.1.2.1.1. sampling locations;

7.6.1.2.1.2. sampling frequency; and

7.6.1.2.1.3. appropriate statistical modeling or other data interpretation techniques.

7.6.1.2.2. Surface Water and Sediment Monitoring

Surface Water and Sediment Monitoring shall be designed to evaluate the effect of the remedy on concentrations of contaminants in surface water and sediment. The plan shall include at a minimum, the following:

7.6.1.2.2.1. sampling locations;

7.6.1.2.2.2. sampling frequency; and

7.6.1.2.2.3. appropriate statistical modeling or other data interpretation techniques.

7.6.1.2.3. Wetland Restoration/Replication Monitoring

Wetland Restoration/Replication Monitoring shall be designed to evaluate and document progress toward attainment of wetland restoration/replication goals and criteria developed in the Demonstration of Compliance Plan. The plan shall include at a minimum, the following:

7.6.1.2.3.1. sampling locations/methods;

7.6.1.2.3.2. sampling frequency; and

7.6.1.2.3.3. appropriate statistical modeling or other data interpretation techniques.

7.6.1.2.4. Revised POP

A revised POP, containing the elements listed in Section 6.1.3 above, shall be prepared in support of all fieldwork to be conducted according to the Post-Construction Monitoring Plan. This revised POP shall be prepared in accordance with Attachment A to this SOW.

7.7. Final (Pre-Certification) Construction Inspection and Construction Report

In the event that EPA requires a Contingent Remedy, the following provisions in this Section when referring to the Remedial Action shall include such Contingent Remedy.

Within thirty (30) days after the Performing Settling Defendants conclude that construction of all components of the Remedial Action has been fully performed (100% complete), the Performing Settling Defendants shall schedule and the parties shall conduct a Final (Pre-Certification) Construction Inspection. This inspection shall include participants representing the Performing Settling Defendants, EPA and MassDEP. Based on the Final (Pre-Certification) Construction Inspection, EPA, after reasonable opportunity for review and comment by MassDEP, shall submit written comments to the Performing Settling Defendants.

If, after taking all action in response to EPA's written comments, including compliance with any specifications and schedules established therein, the Performing Settling Defendants believe that construction is complete, the Performing Settling Defendants shall submit the Final Remedial Construction Report (to be entitled "Construction Report") to EPA and MassDEP. The Construction Report shall include, at a minimum, the following documentation:

- 7.7.1.** a synopsis of the work defined in the SOW and 100% Remedial Design, and a synopsis of the work actually performed;
- 7.7.2.** an explanation of any modifications to work in the SOW and the 100% Remedial Design, and why such modifications were necessary to implement the remedy;
- 7.7.3.** as-built drawings and specifications for all components of the remedy, signed and stamped by a professional engineer registered in the Commonwealth;
- 7.7.4.** a final inspection check-list;
- 7.7.5.** all data and information necessary to demonstrate compliance according to the approved or modified Demonstration of Compliance Plan (including construction quality assurance);
- 7.7.6.** a detailed explanation as to how the Performing Settling Defendants addressed each ARAR;
- 7.7.7.** conclusions regarding conformance of the remedy with the Performance Standards;

7.7.8. a description of any methods implemented by the Performing Settling Defendants in the Remedial Design and Remedial Action, including Operation and Maintenance, to reduce energy and fuel use and emissions, including greenhouse gasses; and

7.7.9. the following statement, signed by a responsible corporate official of a Performing Settling Defendant, or Performing Settling Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after the Final (Pre-Certification) Inspection and review of the Construction Report, EPA, after a reasonable opportunity for review and comment by MassDEP, determines that construction has been completed, EPA will so notify the Performing Settling Defendants in writing ("Completion of Construction Certification"). If, after the Final (Pre-Certification) Inspection and review of the Construction Report, EPA, after a reasonable opportunity for review and comment by MassDEP, determines that any portion of the construction has not been completed, EPA shall notify Performing Settling Defendants of the activities that must be undertaken to complete construction. Performing Settling Defendants shall undertake all activities described in the notice, in accordance with the schedules and specifications established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX of the Consent Decree.

7.8. Operation and Maintenance and Post-Construction Monitoring

Within seven (7) days of receiving the Completion of Construction Certification from EPA, the Performing Settling Defendants shall implement Operation and Maintenance and Post-Construction Monitoring activities in accordance with the terms and schedules set forth in the Operation and Maintenance Plan and Post-Construction Monitoring Plan approved or modified by EPA.

7.9. Institutional Controls

Upon notification from EPA, the Performing Settling Defendants shall implement all required Institutional Controls in accordance with Section IX of the Consent Decree and all approved or modified work plans.

7.10. Groundwater Natural Attenuation Evaluation

EPA will evaluate the progress of the groundwater MNA remediation no less frequently than during the five-year reviews and will determine if the MNA remedy will continue, or if implementation of the Contingent Remedy is necessary. In order for the MNA remedy to continue, EPA will consider the monitoring data in evaluating the MNA criteria listed in Section 5.2.1 above.

7.10.1. Groundwater Natural Attenuation Evaluation Plan

Within one hundred twenty (120) days of EPA's approval or modification of the Final Design Package (100% Remedial Design), the Performing Settling Defendants shall submit to EPA and MassDEP a Groundwater Natural Attenuation Evaluation Plan detailing: the form and intended methods which will be used to gather monitoring data and evaluate the MNA criteria listed in Section 5.2.1 above; and the content of the "Groundwater Natural Attenuation Evaluation Report."

7.10.2. Groundwater Natural Attenuation Evaluation Report

Within one hundred and eighty (180) days after the four-year anniversary of EPA's approval or modification of the Remedial Design (the Final Design Package at the 100% Remedial Design stage), the Performing Settling Defendants shall submit to EPA and MassDEP the Groundwater Natural Attenuation Evaluation Report. Performing Settling Defendants shall update and resubmit the Groundwater Natural Attenuation Evaluation Report annually on the anniversary of the first submission.

7.11. Contingent Remedy

If EPA determines that implementation of the Contingent Remedy is necessary, EPA will notify the Performing Settling Defendants of this determination and the Performing Settling Defendants shall design and implement the Contingent Remedy in the portion(s) of the aquifer where EPA determines that the MNA remedy is not adequately addressing groundwater contamination.

7.11.1. Deliverables

7.11.1.1. Contingent Remedy Design Work Plan (including schedule and any necessary pre-design)

Within thirty (30) days of EPA's notification to the Performing Settling Defendants that implementation of the Contingent Remedy is necessary, the Performing Settling Defendants shall submit to EPA and MassDEP a Contingent Remedy Design Work Plan. The

Contingent Remedy Design Work Plan shall contain detailed descriptions of all activities to be undertaken in connection with any pre-design investigations and design activities necessary for the design and implementation of the Contingent Remedy Remedial Action, including but not limited to:

7.11.1.1.1. Investigations to obtain subsurface information necessary to design the Contingent Remedy Remedial Action;

7.11.1.1.2. Evaluation of treatment methods suitable for target contaminants; and

7.11.1.1.3. Evaluation of wetland protection/restoration construction alternatives for those areas which will be impacted as a result of the Contingent Remedy Remedial Action.

7.11.1.2. Contingent Remedy 50% Remedial Design

7.11.1.2.1. Within sixty (60) days of EPA's approval or modification of the Contingent Remedy Design Work Plan, the Performing Settling Defendants shall submit to EPA and MassDEP a design package at the Contingent Remedy 50% Remedial Design stage (Contingent Remedy 50% Remedial Design Package) to include, at a minimum, the following:

7.11.1.2.1.1. Report presenting the results of pre-design activities, if any;

7.11.1.2.1.2. Basis of design/assumptions;

7.11.1.2.1.3. Contingent Remedy 50% Remedial Design plans, drawings, sketches, calculations, and technical specifications;

7.11.1.2.1.4. Project delivery strategy;

7.11.1.2.1.5. Draft bid documents; and

7.11.1.2.1.6. Regulatory compliance statement (description of compliance with ARARs).

7.11.1.2.2. Conduct and report on a constructability review which evaluates the suitability of the project and its components in relation to the Site.

7.11.1.3. Contingent Remedy Remedial Design Completion

The Performing Settling Defendants shall complete all activities in the Contingent Remedy Remedial Design Completion Phase.

7.11.1.3.1. Within forty-five (45) days of EPA's approval or modification of the Contingent Remedy 50% Remedial Design Package, Performing Settling Defendants shall submit to EPA and MassDEP a Contingent Remedy Pre-Final Design Package at the Contingent Remedy 95% Remedial Design (Contingent Remedy 95% Remedial Design Package) stage to include, at a minimum, the following:

7.11.1.3.1.1. All revisions required by EPA based upon EPA and MassDEP comments on the Contingent Remedy 50% Remedial Design;

7.11.1.3.1.2. Basis of design/assumptions, noting any changes;

7.11.1.3.1.3. Contingent Remedy 95% Remedial Design plans, drawings, sketches, calculations, and technical specifications;

7.11.1.3.1.4. Draft Contingent Remedy RA Work Plan (see Section 7.1.1. for RA Work Plan requirements) and Contingent Remedy RA POP.

7.11.1.3.1.5. Regulatory compliance statement (description of compliance with ARARs);

7.11.1.3.1.6. Final bid documents;

7.11.1.3.1.7. If necessary, update Institutional Controls Plan; and

7.11.1.3.1.8. Draft Contingent Remedy Operation and Maintenance (OM) Plan to ensure long-term continued effectiveness of the remedy and conformance with the Performance Standards (see minimum requirements in Section 7.6.1.1).

7.11.1.3.2. Within thirty (30) days of EPA's approval or modification on the Contingent Remedy 95% Remedial Design package, Performing Settling Defendants shall submit to EPA and MassDEP a Contingent Remedy Final Design Package at the Contingent Remedy 100% Remedial Design stage (Contingent Remedy 100% Remedial Design Package) to include, at a minimum, the following:

7.11.1.3.2.1. All revisions required by EPA based on EPA and MassDEP review of the information provided at the Contingent Remedy Pre-Final Design (Contingent Remedy 95% Remedial Design Package);

7.11.1.3.2.2. Revised basis of design/assumptions, noting any changes;

7.11.1.3.2.3. Contingent Remedy 100% Remedial Design plans, drawings, sketches, calculations, and technical specifications;

7.11.1.3.2.4. Draft Final Contingent Remedy RA Work Plan, and RA POP;

7.11.1.3.2.5. Revised constructability review, noting any changes; and

7.11.1.3.2.6. Final Contingent Remedy Operation and Maintenance (OM) Plan.

7.11.1.4. Contingent Remedy Demonstration of Compliance Plan

Within sixty (60) days of EPA's approval or modification of the Contingent Remedy Design Work Plan, the Performing Settling

Defendants shall submit to EPA and MassDEP a Contingent Remedy Demonstration of Compliance Plan. The Contingent Remedy Demonstration of Compliance Plan shall describe in detail all activities that will be conducted to comply with and/or demonstrate compliance with all performance standards, including cleanup levels and applicable, relevant and appropriate requirements (ARARs). (see Section 6.1.9 above for Demonstration of Compliance Plan requirements).

7.11.2. Implementation

Within thirty (30) days of EPA's approval or modification of the Contingent Remedy 100% Remedial Design Package, the Performing Settling Defendants shall submit to EPA and MassDEP a final Contingent Remedy Remedial Action Work Plan and schedule for implementing the Contingent Remedy Remedial Action and associated activities, consistent with the approved or modified Contingent Remedy 100% Remedial Design Package. Activities contained or described in their entirety in other plans may be incorporated into the Contingent Remedy Remedial Action (RA) Work Plan. The Contingent Remedy RA Work Plan shall contain, at a minimum:

7.11.2.1. A description of the activities necessary to implement all components of the Contingent Remedy Remedial Action, in accordance with the Contingent Remedy 100% Remedial Design Package, the SOW, the Consent Decree and the ROD.

7.11.2.2. A revised POP, containing the elements listed in Section 6.1.3 above, shall be prepared in support of all field work to be conducted according to the approved or modified Contingent Remedy RA Work Plan.

7.11.2.3. A detailed schedule for completing the activities associated with implementation of the Contingent Remedy Remedial Action.

7.11.3. Commencement of Construction

7.11.3.1. Within thirty (30) days of receiving EPA's approval or modification of the Contingent Remedy RA Work Plan, the Performing Settling Defendants shall commence the Contingent Remedy Remedial Action activities as specified in such Contingent Remedy RA Work Plan.

7.11.3.2. If, during the construction of the Contingent Remedy Remedial Action, conditions warrant modification of the design, construction, and/or schedules, the Performing Settling Defendants may propose such design, construction or schedule modifications. Following approval or modification by EPA, after reasonable opportunity for review and comment by MassDEP, the Performing Settling Defendants shall implement the design or construction modifications required.

7.11.4. Meetings During Construction

7.11.4.1. During the construction period for the Contingent Remedy Remedial Action, the Performing Settling Defendants and the Supervising Contractor shall meet monthly with EPA and MassDEP regarding the progress and details of construction. Conference calls may be substituted for meetings upon approval of EPA.

7.11.4.2. The Performing Settling Defendants and/or EPA may schedule additional meetings as reasonably necessary during construction.

SUTTON BROOK DISPOSAL AREA SUPERFUND SITE

ATTACHMENT A TO RD/RA STATEMENT OF WORK (“SOW”) PROJECT OPERATIONS PLAN REQUIREMENTS

Before any field activities commence, the Performing Settling Defendants shall submit several site-specific plans to establish procedures to be followed by the Performing Settling Defendants in performing field, laboratory, and analysis work. These site-specific plans include the:

- A. Site Management Plan (SMP),
- B. Sampling and Analysis Plan (SAP), and
- C. Health and Safety Plan (HSP).

These plans shall be combined to form the Project Operations Plan (POP). The components of the POP are described in Sections A through C herein.

The format and scope of each Plan shall be modified as needed to describe the sampling, analyses, and other activities that are clarified as the work progresses. EPA may modify the scopes of these activities at any time during work performed pursuant to the SOW at the discretion of EPA in response to the evaluation of sampling results, changes in sampling requirements, and other developments or circumstances.

A. Site Management Plan (SMP)

The Site Management Plan (SMP) shall describe how the Performing Settling Defendants will manage the project to complete the Work required at the Site. The overall objective of the Site Management Plan is to provide EPA and MassDEP with a written understanding and commitment of how various project aspects such as access, security, contingency procedures, management responsibilities, waste disposal, budgeting, and data handling are being managed by the Performing Settling Defendants. Specific objectives and provisions of the Site Management Plan shall include, but are not limited to the following:

1. Provide a map and a list of properties, the property owners, and addresses of owners to whose property access may be required.
2. Establish necessary procedures to delineate sampling areas and activities and ensure safety of workers.
3. Establish necessary procedures and provide sample letters to land owners to arrange field activities and to ensure EPA and MassDEP are informed of access-related problems and issues.
4. Provide for the security of government and private property at the Site.

5. Prevent unauthorized entry to the Site, which might result in exposure of persons to potentially hazardous conditions.
6. Secure access agreements for all properties where field work is required.
7. Communicate to EPA, MassDEP, and the public the organization and management of all work activities, including key personnel and their responsibilities.
8. Provide a list of contractors and subcontractors of the Performing Settling Defendants for all work required under the SOW and a description of their activities and roles.
9. Provide for the proper disposal of materials used and wastes generated during all work activities (e.g., drill cutting, extracted groundwater, protective clothing, disposable equipment). These provisions shall be consistent with the off-site disposal aspects of CERCLA, RCRA, and applicable state laws. The Performing Settling Defendants, or their authorized representative, or another party acceptable to EPA and MassDEP, shall be identified as the generator of wastes for the purpose of regulatory or policy compliance.
10. Provide plans and procedures for organizing and presenting the data generated and for verifying its quality before and during the Remedial Design and Remedial Action sampling activities. These plans shall include a description of the computer database management systems that are compatible with hardware available to EPA Region I personnel for handling media-specific sampling results obtained before and during the Remedial Design and Remedial Action sampling activities. The description shall include data input fields, examples of data base management output from the coding of all Remedial Design and Remedial Action sampling data, appropriate quality assurance/quality control to ensure accuracy, and capabilities of data manipulation. To the degree possible, the data base management parameters shall be compatible with the EPA Region I data storage and analysis system.

B. Sampling and Analysis Plan (SAP)

The Sampling and Analysis Plan (SAP) shall consist of both:

- (1) a Quality Assurance Project Plan (QAPP) that describes the policy, organization, functional activities, and the quality assurance and quality control protocols necessary to

achieve the data quality objectives dictated by the intended use of the data; and (2) the Field Sampling Plan (FSP) that provides guidance for all fieldwork by defining in detail the sampling and data-gathering methods to be used on a project. Components required by these two plans are described below.

The SAP shall be the framework of all anticipated field activities (e.g., sampling objectives, evaluation of existing data, standard operating procedures) and contain specific information on all field work and analysis (e.g., sampling locations and rationale, sample numbers and rationale, analyses of samples). During the Remedial Design and Remedial Action sampling activities, the SAP shall be revised as necessary to cover each round of field or laboratory activities. Revisions or a statement regarding the need for revisions shall be included in each deliverable describing all new field work.

The purpose of the SAP is to ensure that sampling data collection activities will be comparable to and compatible with previous data collection activities performed at the Site while providing a mechanism for planning and approving field activities. The overall objectives of the two documents comprising the SAP are as follows:

1. to document specific objectives, procedures, and rationales for fieldwork and sample analytical work;
2. to provide a mechanism for planning and approving on-site and laboratory activities;
3. to ensure that sampling and analysis activities are necessary and sufficient; and
4. to provide a common point of reference to ensure the comparability and compatibility of all objectives and the sampling and analysis activities.

To achieve this last objective, the SAP shall document all field and sampling and analysis objectives as noted above, as well as all data quality objectives and specific procedures/protocols for field sampling and analysis.

The following critical elements of the SAP shall be described for each sample medium (e.g., ground water, soil, and soil vapor) and for each sampling event:

1. sampling objectives (e.g., engineering related, well yields, zone of influence, performance monitoring, demonstration of attainment, five year review, etc.);

2. data quality objectives, including data uses and the rationale for the selection of analytical levels and detection limits (see Guidance on Systematic Planning using the Data Quality Objectives Process, EPA QA/G-4 (EPA/240-B-06/001), February 2006; Data Quality Objectives Decision Errors Feasibility Trials (DEFT) Software QA/G-4D (EPA/240/B-01/007), September 2001; and Final Guidance Data Usability in Risk Assessment (Part A)(publication 9285.7-09A, April 1992, PB92-963356); Guidance for Data Usability in Risk Assessment (Part B) (publication 9285.7-09B, May 1992, PB92-963362).
3. site background update, including an evaluation of the validity, sufficiency, and sensitivity of existing data;
4. sampling locations and rationale;
5. sampling procedures and rationale and references;
6. numbers of samples and justification;
7. numbers of field blanks, trip blanks, and duplicates;
8. sample media (e.g., ground water, surface water, soil, sediment, air, and buildings, facilities, and structures, including surfaces, structural materials, and residues);
9. sample equipment, containers, minimum sample quantities, sample preservation techniques, maximum holding times;
10. instrumentation and procedures for the calibration and use of portable air, soil-, or water-monitoring equipment to be used in the field;
11. chemical and physical parameters in the analysis of each sample;
12. clearly stated chain-of-custody procedures (see EPA NEIC Policies and Procedures Manual, EPA 330/9-78 001-R May 1978, revised May 1986);
13. procedures to eliminate cross-contamination of samples (such as dedicated equipment);
14. sample types, including collection methods and if field and laboratory analyses will be conducted;

15. laboratory analytical procedures, equipment, and detection limits;
16. equipment decontamination procedures;
17. consistency with the other parts of the Work Plan(s) by having identical objectives, procedures, and justification, or by cross-reference;
18. analysis from each medium of selected analytes, as approved by EPA; and
19. for any limited field investigation (field screening technique), provisions for the collection and laboratory analysis of parallel samples and for the quantitative correlation analysis in which screening results are compared with laboratory results.

The SAP shall allow for notifying EPA, at a minimum, three weeks before field sampling or monitoring activities commence. The SAP shall also allow split, replicate, or duplicate samples to be taken by EPA (or their contractor personnel). At the request of EPA, the Performing Settling Defendants shall provide these samples in appropriately pre-cleaned containers to the government representatives. Identical procedures shall be used to collect the Performing Settling Defendants' and the parallel split samples unless otherwise specified by EPA. Several references shall be used to develop the SAP, for example:

1. Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA (OSWER Directive 9355.3-01, EPA/540/G-89/004, October 1988);
2. Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (EPA Pub. SW-846, Third Edition, or most recent update);
3. EPA Requirements for Quality Assurance Plans, QA/R-5 (EPA/240/B-01/003, March 2001);
4. Region I, EPA-New England Quality Assurance Project Plan Program Guidance, April 2005;
5. Guidance on Systematic Planning using the Data Quality Objectives Process, EPA QA/G-4 (EPA/240-B-06/001), February 2006;
6. Data Quality Objectives Decision Errors Feasibility Trials (DEFT) Software, QA/G-4D (EPA/240/B-01-007), September 2001);

7. Systematic Planning: A Case Study for Hazardous Waste Site Investigations, EPA QA/CS-1 (EPA/240/B-06/004), February 2006;
8. Guidance for Preparing Standard Operating Procedures (SOPs), EPA QA/G-6 (EPA/600/B-07/001), April 2007;
9. Region I, EPA-New England Data Validation Functional Guidelines for Evaluating Environmental Analyses, Revised December 1996;
10. Data Quality Assessment: A Reviewer's Guide, EPA QA/G-9R (EPA/240/B-06/002), February 2006;
11. Data Quality Assessment: Statistical Methods for Practitioners, EPA QA/G-9S (EPA/240/B-06/003), February 2006;
12. EPA Requirements for Quality Management Plans, QA/R-2 (EPA 240/B-01/002), March 2001; and
13. Guidance for Quality Assurance Project Plans, QA/G-5 (EPA/240/R-02/009), December 2002.

B.1. QUALITY ASSURANCE PROJECT PLAN (QAPP)

The Quality Assurance Project Plan (QAPP) shall document in writing the site-specific objectives, policies, organizations, functional activities, sampling and analysis activities and specific quality assurance/quality control activities designed to achieve the data quality objectives (DQOs) of the Remedial Design and Remedial Action sampling activities. The QAPP developed for this project shall document quality control and quality assurance policies, procedures, routines, and specifications.

Project activities throughout the Remedial Design and Remedial Action sampling activities shall comply with the QAPP. QAPP sampling and analysis objectives and procedures shall be consistent with EPA Requirements for Quality Assurance Plans (QA/R-5) and appropriate EPA handbooks, manuals, and guidelines including Guidance for Quality Assurance Project Plans, QA/G-5 (EPA/240/R-02/009), December 2002; Region I, EPA-New England Quality Assurance Project Plan Program Guidance, April 2005; Guidelines Establishing Test Procedures for the Analysis of Pollutants (40 C.F.R. Part 136); and Compendium of Methods for the Determination of Toxic Organic Compounds in Ambient Air (EPA-600/4-84-041 April 1984).

All the QAPP elements identified in EPA QA/R-5 and EPA QA/G-5 must be addressed.

As indicated in EPA QA/R-5 and EPA QA/G-5, a list of essential elements must be considered in the QAPP for the Remedial Design and Remedial Action sampling activities. If a particular element is not relevant to a project and therefore excluded from the QAPP, specific and detailed reasons for exclusion must be provided.

Information in a plan other than the QAPP may be cross-referenced clearly in the QAPP provided that all objectives, procedures, and rationales in the documents are consistent, and the reference material fulfills requirements of EPA QA/R-5 and EPA QA/G-5. Examples of how this cross reference might be accomplished can be found in the Guidance for the Data Quality Objectives Process, QA/G-4 (EPA/600/R-96/055) and the Data Quality Objectives Decision Error Feasibility Trials (DEFT) Software, QA/G-4D (EPA/240/B-01/007). EPA-approved references, or equivalent, or alternative methods approved by EPA shall be used, and their corresponding EPA-approved guidelines should be applied when they are available and applicable.

Laboratory QA/QC Procedures.

The QA/QC procedures and Standard Operating Procedures (“SOPs”) for any laboratory (both fixed and mobile) used during the Remedial Design and Remedial Action sampling activities shall be included in the Performing Settling Defendants’ QAPP. When this work is performed by a contractor to a private party, each laboratory performing chemical analyses shall meet the following requirements:

1. be approved by the State Laboratory Evaluation Program, if available;
2. have successful performance in one of EPA's National Proficiency Sample Programs (i.e., Water Supply or Water Pollution Studies or the State's proficiency sampling program);
3. be familiar with the requirements of 48 CFR Part 1546 contract requirements for quality assurance; and
4. have a QAPP for the laboratory including all relevant analysis. This plan shall be referenced as part of the contractor's QAPP.

Data Validation Procedures.

The Performing Settling Defendants are required to certify that a representative portion of the data has been validated by a person independent of the laboratory according to the Region I, EPA-New England Data Validation Functional Guidelines for Evaluating Environmental Analyses, Revised December 1996 (amended as necessary to account for the differences between the approved analytical methods for the project and the

current Contract Laboratory Program Statements of Work (CLP SOW)). A data validation reporting package as described in the guidelines cited above must be delivered at the request of the EPA Project Coordinator. Approved validation methods shall be contained in the QAPP.

The independent validator shall not be the laboratory conducting the analysis and should be a person with a working knowledge of or prior experience with EPA data validation procedures. The independent validator shall certify that the data has been validated, discrepancies have been resolved if possible, and the appropriate qualifiers have been provided.

Data Package Requirements.

The Performing Settling Defendants must require and keep the complete data package and make it available to EPA on request in order for EPA to conduct an independent validation of the data. The complete data package shall consist of all results, the raw data, and all relevant QA/QC information. The forms contained in the data validation functional guidelines must be utilized to report the data when applicable. Raw data includes the associated chromatograms and the instrument printouts with area and height peak results. The peaks in all standards and samples must be labeled. The concentration of all standards analyzed with the amount injected must be included. *All internal and external laboratory sample tracking information must be included in the data package.* An example data package deliverable is listed below:

1. a summary of positive results and detection limits of non-detects with all raw data;
2. tabulated surrogate recoveries and QC limits from methods 3500 and 8000 in SW-846 and all validation and sample raw data;
3. tabulated matrix spike/matrix spike duplicate recoveries, relative percent differences, spike concentrations, and QC limits from methods 3500 and 8000 in SW-846 and all validation and sample raw data;
4. associated blanks (trip, equipment, and method with accompanying raw data for tests);
5. tabulated initial and continuing calibration results (concentrations, calibration factors or relative response factors and mean relative response factors, % differences and % relative standard deviations) with accompanying raw data;

6. tabulated retention time windows for each column;
7. a record of the daily analytical scheme (run logbook, instrument logbook) which includes samples and standards order of analysis;
8. the chain of custody for the sample shipment groups, *DAS packing slip*, *DAS analytical specifications*;
9. a narrative summary of method and any problems encountered during extraction or analysis;
10. tabulated sample weights, volumes, and % solids used in each sample calculation;
11. example calculation for positive values and detection limits; and
12. SW-846 method 3500 and 8000 validation data for all tests.

The forms contained in Chapter 1 of SW-846 (Second Edition 1982 as amended by Update I, April 1984, and Update II, April 1985) or the current CLP SOW forms must be utilized to report the data when applicable.

B.2 Field Sampling Plan (FSP)

The objective of the Field Sampling Plan is to provide EPA, MassDEP and all parties involved with the collection and use of field data with a common written understanding of all field work. The FSP should be written so that a field sampling team unfamiliar with the Site would be able to gather the samples and field information required. Guidance for the selection of field methods, sampling procedures, and custody can be acquired from the Compendium of Superfund Field Operations Methods (OSWER Directive 9355.0-14, EPA/540/P-87/001), December 1987, which is a compilation of demonstrated field techniques that have been used during remedial response activities at hazardous waste sites. The FSP shall be site-specific and shall include the following elements:

1. Site Background. If the analysis of the existing site details is not included in the Work Plan or in the QAPP, it must be included in the FSP. This analysis shall include a description of the Site and surrounding areas and a discussion of known and suspected contaminant sources, probable transport pathways, and other information about the Site. The analysis shall also include descriptions of specific data gaps

and ways in which sampling is designed to fill those gaps. Including this discussion in the FSP will help orient the sampling team in the field.

2. Sampling Objectives. Specific objectives of sampling effort that describe the intended uses of data must be clearly and succinctly stated.
3. Sampling Location and Frequency. This section of the FSP identifies each matrix to be collected and the constituents to be analyzed. Tables shall be used to clearly identify the number of samples, the type of sample (water, soil, etc.), and the number of quality control samples (duplicates, trip blanks, equipment blanks, etc.). Figures shall be included to show the locations of existing or proposed sample points.
4. Sample Designation. A sample numbering system shall be established for the project. The sample designation should include the sample or well number, the sample round, the sample matrix (e.g., surface soil, ground water and soil boring), and the name of the Site.
5. Sampling Equipment and Procedures. Sampling procedures must be clearly written. Step-by-step instructions for each type of sampling that are necessary to enable the field team to gather data that will meet the Data Quality Objectives (DQOs). A list should include the equipment to be used and the material composition (e.g., Teflon and stainless steel) of equipment along with decontamination procedures.
6. Sampling Handling and Analysis. A table shall be included that identifies sample preservation methods, types of sampling jars, shipping requirements, and holding times. Examples of paperwork such as traffic reports, chain-of-custody forms, packing slips, and sample tags filled out for each sample as well as instructions for filling out the paperwork must be included. Field documentation methods including field notebooks and photographs shall be described.

Each Field Sampling Plan submitted as a part of the Project Operations Plan for the Remedial Design and Remedial Action sampling activities shall be sufficiently detailed to carry out the study, and shall provide data needed to address the objective of the study and to complete the study. Each study shall be designed to achieve a high performance on the first attempt. Each work plan shall be related (by cross-references) to the other requirements in the Project Operations Plan.

C. Health and Safety Plan (HSP)

The objective of the site-specific Health and Safety Plan is to establish the procedures, personnel responsibilities and training necessary to protect the health and safety of all on-site personnel during all work activities. The plan shall provide procedures and plans for routine but hazardous field activities and for unexpected site emergencies.

The site-specific health and safety requirements and procedures in the HSP shall be updated based on an ongoing assessment of site conditions, including the most current information on each medium. For each field task during all work performed under the SOW, the HSP shall identify:

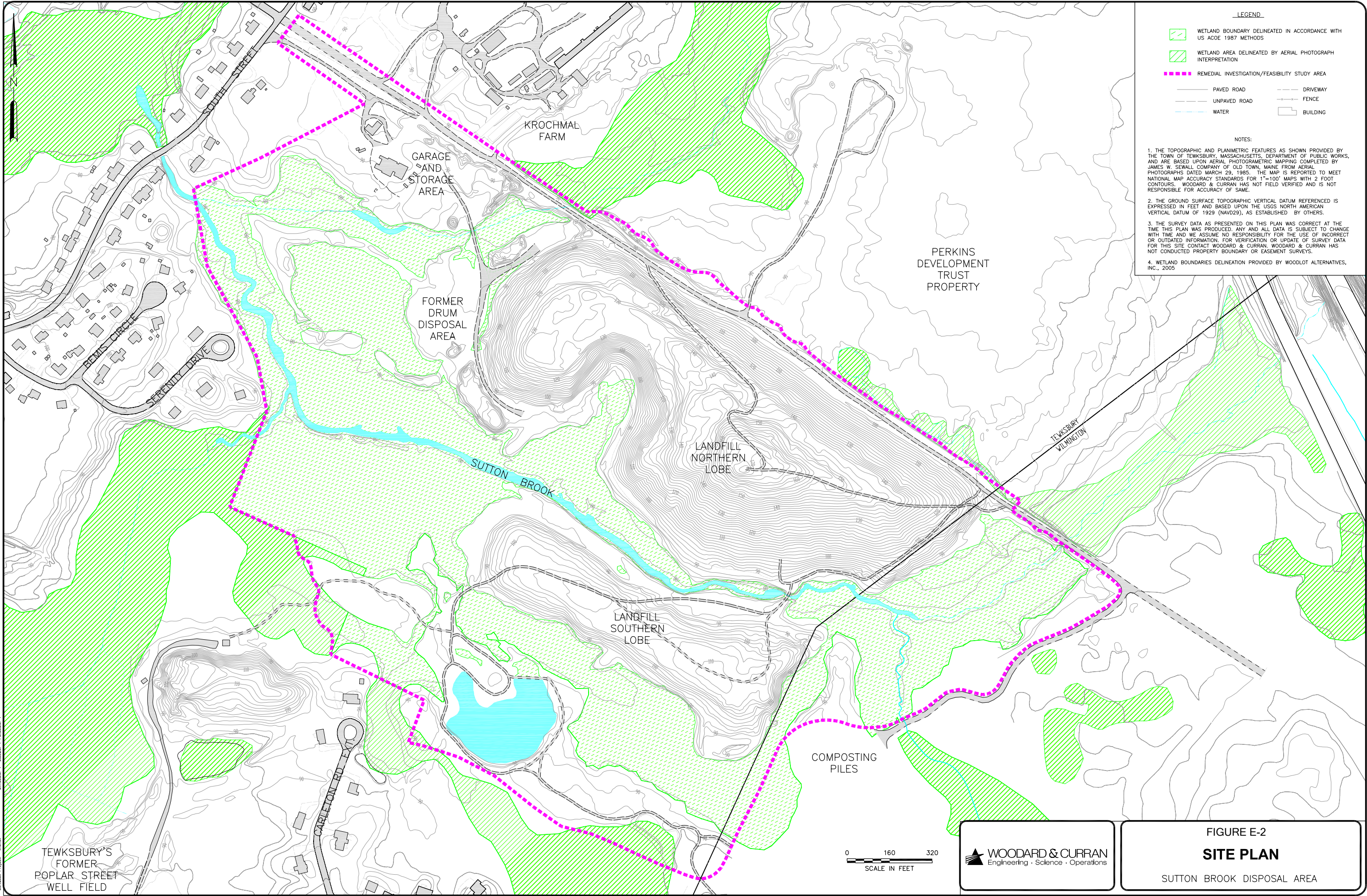
1. possible problems and hazards and their solutions;
2. environmental surveillance measures;
3. specifications for protective clothing;
4. the appropriate level of respiratory protection;
5. the rationale for selecting that level; and
6. criteria, procedures, and mechanisms for upgrading the level of protection and for suspending activity, if necessary.

The HSP shall also include the delineation of exclusion zones on a map and in the field. The HSP shall describe the on-site person responsible for implementing the HSP for the Performing Settling Defendants' representatives at the Site, protective equipment personnel decontamination procedures, and medical surveillance. The following documents and resources shall be consulted:

1. OSHA e-HASP Software – Version 1.0, September 2003
(www.osha.gov/dep/etools/ehasp/index.html)
2. Hazardous Waste Operations and Emergency Response (Department of Labor, Occupational Safety and Health Administration (OSHA), 29 C.F.R. Part 1910.120); and
3. Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities: Appendix B (NIOSH/OSHA/EPA 1986).

OSHA regulations at 40 C.F.R. § 1910, which describe the routine emergency provisions of a site-specific health and safety plan, and the OSHA e-HASP Software, shall be the primary references used by the Performing Settling Defendants in developing and implementing the Health and Safety Plan.

The measures in the HSP shall be developed and implemented to ensure compliance with all applicable state and federal occupational health and safety regulations. The HSP shall be updated at the request of EPA during the course of the Remedial Design and Remedial Action activities and as necessary.



LEGEND

- WETLAND BOUNDARY DELINEATED IN ACCORDANCE WITH US ACOE 1987 METHODS
- WETLAND AREA DELINEATED BY AERIAL PHOTOGRAPH INTERPRETATION
- REMEDIAL INVESTIGATION/FEASIBILITY STUDY AREA
- PAVED ROAD
- UNPAVED ROAD
- WATER
- DRIVEWAY
- FENCE
- BUILDING

NOTES:

1. THE TOPOGRAPHIC AND PLANIMETRIC FEATURES AS SHOWN PROVIDED BY THE TOWN OF TEWKSBURY, MASSACHUSETTS, DEPARTMENT OF PUBLIC WORKS, AND ARE BASED UPON AERIAL PHOTOGRAMETRIC MAPPING COMPLETED BY JAMES W. SEWALL COMPANY OF OLD TOWN, MAINE FROM AERIAL PHOTOGRAPHS DATED MARCH 29, 1985. THE MAP IS REPORTED TO MEET NATIONAL MAP ACCURACY STANDARDS FOR 1"=100' MAPS WITH 2 FOOT CONTOURS. WOODARD & CURRAN HAS NOT FIELD VERIFIED AND IS NOT RESPONSIBLE FOR ACCURACY OF SAME.
2. THE GROUND SURFACE TOPOGRAPHIC VERTICAL DATUM REFERENCED IS EXPRESSED IN FEET AND BASED UPON THE USGS NORTH AMERICAN VERTICAL DATUM OF 1929 (NAVD29), AS ESTABLISHED BY OTHERS.
3. THE SURVEY DATA AS PRESENTED ON THIS PLAN WAS CORRECT AT THE TIME THIS PLAN WAS PRODUCED. ANY AND ALL DATA IS SUBJECT TO CHANGE WITH TIME AND WE ASSUME NO RESPONSIBILITY FOR THE USE OF INCORRECT OR OUTDATED INFORMATION. FOR VERIFICATION OR UPDATE OF SURVEY DATA FOR THIS SITE CONTACT WOODARD & CURRAN. WOODARD & CURRAN HAS NOT CONDUCTED PROPERTY BOUNDARY OR EASEMENT SURVEYS.
4. WETLAND BOUNDARIES DELINEATION PROVIDED BY WOODLOT ALTERNATIVES, INC., 2005

IMAGE Files: <No Images>
XREF Files: ANSB-01.dwg
\\V:\proj\proj\210617 Sutton Brook\Map Drawings\ANSB-01.dwg
Source: Project: 210617 Sutton Brook, Date: 1/1/2006, 1/1/2006, 1/1/2006

TEWKSBURY'S
FORMER
POPLAR STREET
WELL FIELD

0 160 320
SCALE IN FEET

WOODARD & CURRAN
Engineering • Science • Operations

FIGURE E-2

SITE PLAN

SUTTON BROOK DISPOSAL AREA

APPENDIX D-1

PERFORMING SETTLING DEFENDANTS

Appendix D-1

Performing Settling Defendants

Sutton Brook Disposal Area Superfund Site; Tewksbury, Massachusetts

1. Ausimont Industries, Inc., for itself and on behalf of predecessor entities Compo Industries, Inc., Pandel-Bradford, Inc., and Pandel, Inc.
2. BASF Corporation
3. Boston and Maine Corporation, for itself and on behalf of predecessor entity Boston and Maine Railroad
4. Browning-Ferris Industries, Inc. (Massachusetts), for itself and on behalf of predecessor entities Barry Bros., Inc., Greenwood Disposal Company, Inc., and Miller Disposal Services, Inc.
5. Allied Waste Systems, Inc., for itself and on behalf of predecessor entity Reliable Rubbish Disposal, Inc.
6. BFI Waste Systems of North America, LLC, for itself and on behalf of Ace Disposal Service, Inc.
7. BTU International, Inc.
8. E.I. DuPont De Nemours and Co., for itself and on behalf of predecessor entity New England Nuclear Corporation
9. Honeywell International, Inc.
10. Mallinckrodt LLC, for itself and on behalf of predecessor entity International Minerals and Chemical Co. on behalf of its subsidiary Kingston Steel Drum Co.
11. M/A-COM, Inc., for itself and on behalf of predecessor entity Microwave Associates, Inc.
12. Raytheon Company
13. Sears, Roebuck and Co.
14. Textron Systems Corp., for itself and on behalf of predecessor entity AVCO Corporation
15. Town of Tewksbury
16. Verizon New England, Inc. f/k/a New England Telephone and Telegraph Company
17. Waste Management of Massachusetts, Inc., for itself and on behalf of predecessor entity V. Canelas Co., Inc.
18. Waste Management Disposal Services of Massachusetts, Inc., for itself and on behalf of predecessor entity SCA Disposal Services of New England, Inc. - Eastern Division
19. Waste Management of New Hampshire, Inc., for itself and on behalf of predecessor entity P&T Container Service Co., Inc.
20. Zeneca, Inc., for itself and on behalf of predecessor entity Polyvinyl Chemicals Inc. a/k/a Polyvinyl Chemical Industries

APPENDIX D-2

CASHOUT SETTLING DEFENDANTS

Appendix D-2

Cashout Settling Defendants

Sutton Brook Disposal Area Superfund Site; Tewksbury, Massachusetts

	Payment
1. Emhart Industries, Inc., for itself and on behalf of predecessor entity United Shoe Machinery Corp. (Bostik Division)	\$365,743
2. Holt & Bugbee Company	\$281,036
3. National Grid USA, for itself and on behalf of subsidiaries New England Power Company and Massachusetts Electric Company	\$806,251
4. Lockheed Martin Corp., for itself and on behalf of predecessor entity RCA	\$521,059
5. Tewksbury State Hospital (Massachusetts Dept. of Public Health)	\$492,321
6. The Gillette Company	\$281,536

APPENDIX D-3

DE MINIMIS SETTLING DEFENDANTS

Appendix D-3

De Minimis Settling Defendants

Sutton Brook Disposal Area Superfund Site; Tewksbury, Massachusetts

	Payment
1. 3M Company (f/k/a Minnesota Mining and Manufacturing Co.)	\$573,725
2. American Science and Engineering, Inc.	\$7,145
3. Anton's Cleaners, Inc.	\$287,292
4. Cabot Corp.	\$206,325
5. Leggett & Platt, Incorporated, for itself and on behalf of predecessor entities Cambridge Tool and Manufacturing Co., Inc. and JapENAMELac Corp.	\$51,209
6. Computervision LLC	\$445,257
7. Fisons Corporation	\$38,300
8. FC Meyer Packaging, Inc and Millen Inc. on behalf of themselves and Millen Industries, Inc. a/k/a Frank C. Meyer Co.	\$304,212
9. SPX Corporation, for itself and on behalf of predecessor entity GCA Corporation	\$24,896
10. General Latex and Chemical Corporation	\$558
11. Hewlett-Packard Co., for itself and on behalf of predecessor entities Apollo Computer, Inc. and Digital Equipment Corp.	\$204,335
12. Majilite Manufacturing, Inc.	\$237,902
13. Massachusetts Bay Transportation Authority	\$99,763
14. Massachusetts Institute of Technology	\$90,183
15. Schneider Automation Division of Square D Company, for itself and on behalf of predecessor entity Modicon, Inc.	\$223,310
16. New Balance Athletic Shoe, Inc.	\$221,802
17. Piconics, Inc.	\$13,394
18. Roche Brothers Barrel and Drum Company, Inc.	\$16,587
19. The Sherwin-Williams Company	\$500
20. TRW Automotive US LLC, for itself and on behalf of predecessor entity Carr Fasteners	\$200,850
21. Tutor Perini Corporation f/k/a Perini Corporation	\$43,727
22. Vishay Intertechnology, Inc., for itself and on behalf of its subsidiary Vishay BLH, Inc. f/k/a BLH Electronics, Inc. (a Delaware corporation)	\$278,837
23. W.R. Grace & Co.	\$85,145

APPENDIX D-4

TOWN PAYMENTS

8/28/09

Appendix D-4

Town of Tewksbury Contributions

Sutton Brook Disposal Area Superfund Site; Tewksbury, Massachusetts

Year		Value of Contribution, before interest
1.	2009	\$75,000
2.	2010	\$150,000
3.	2011	\$225,000
4.	2012	\$300,000
5.	2013	\$375,000
6.	2014	\$347,479
7.	2015	\$347,479
8.	2016	\$347,479
9.	2017	\$347,479
10.	2018	\$347,479
11.	2019	\$347,479
12.	2020	\$347,479
13.	2021	\$347,479
14.	2022	\$347,479
15.	2023	\$347,479
16.	2024	\$347,479
17.	2025	\$347,479
18.	2026	\$347,479
19.	2027	\$347,479
20.	2028	\$347,479
21.	2029	\$347,479
22.	2030	\$347,479
23.	2031	\$347,479
24.	2032	\$347,479
25.	2033	\$347,479
26.	2034	\$347,479
27.	2035	\$347,479
28.	2036	\$347,479
29.	2037	\$347,479
30.	2038	\$347,479
31.	2039	\$347,479

APPENDIX E

FORM OF GRANT OF ENVIRONMENTAL RESTRICTION AND EASEMENT

GRANT OF ENVIRONMENTAL RESTRICTION AND EASEMENT

42 U.S.C. § 9601, *et seq.* [, and M.G.L. c. 21E, § 6]
[reference Chapter 21E only if MassDEP is a Grantee]

[Note: This instrument is established as an institutional control for a federal Superfund site pursuant to _____ [add reference to Governing Agreement and any separate agreement with the landowner], as set forth below, and contains a GRANT OF ENVIRONMENTAL RESTRICTION AND EASEMENT running to [the UNITED STATES on behalf of its ENVIRONMENTAL PROTECTION AGENCY] [include the following only if MassDEP is a Grantee:] [and/or] [the MASSACHUSETTS DEPARTMENT of ENVIRONMENTAL PROTECTION]]

Disposal Site Name: _____
Site Location: _____ [Town/City], MA
EPA Site Identification Number: _____
MassDEP Release Tracking No. ____ - _____

This GRANT OF ENVIRONMENTAL RESTRICTION AND EASEMENT (the "Grant") is made as of this ____ day of _____, 20__, by _____, of _____ [insert property owner's address] ("Grantor").

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of that [those] certain parcel(s) of [vacant] land located in _____ [insert Town/City], _____ County, Massachusetts, [with the buildings and improvements thereon], pursuant to [a deed recorded with the _____ Registry of Deeds in Book _____, Page _____]; [or insert source of title other than by deed]; and/or [Certificate of Title No. _____ issued by the Land Registration Office of the _____ Registry District];

WHEREAS, said parcel(s) of land, known and/or numbered as _____, which is [are] more particularly bounded and described in Exhibit A ("Legal Description of the Property"), attached hereto and made a part hereof (the "Property"), is [are] subject to this Grant. The Property is shown on [a plan entitled "_____"] prepared by _____, dated _____, recorded with the _____ Registry of Deeds in Plan Book _____, Plan _____, and/or on [Land Court Plan No. _____] [shown as Lot _____];

[WHEREAS, that [those] certain portion(s) of the Property subject to restrictions has [have] been designated _____ [list names of each type of restricted area, such as "Area A" or "the Cap Area"—this reference, legal descriptions and survey plan

must use internally consistent terminology] ([collectively, all of the foregoing restricted areas comprising] the "Restricted Area");]

[WHEREAS, the Restricted Area is bounded and described in Exhibit A-1 ("Legal Description of the Restricted Area"), attached hereto and made a part hereof;]

[WHEREAS, the Restricted Area is shown on a plan *[refers to a survey plan showing the restricted area and perimeter of each subdivided lot comprising the portion of the Property where the Restricted Area is located]* consisting of _____ sheet(s), entitled "Plan of Restricted Area" prepared by _____, dated _____, and recorded in the _____ Registry of Deeds in Plan Book _____, Plan _____; [and on a sketch plan attached hereto and filed herewith for registration]] *[note that a full-size plan must be recorded on the unregistered side, even for registered land]*;

WHEREAS, the Property [and the Restricted Area] is [are] subject to covenants, restrictions, easements and other rights and obligations under the terms and conditions of this instrument;

WHEREAS, [a portion of] the Property [is part of] [contains] a federal Superfund Site, known as the _____ Superfund Site (the "Site"). The U.S. Environmental Protection Agency, an agency established under the laws of the United States, having its New England regional office at One Congress Street, Boston, Massachusetts 02114 ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9605, placed the Site on the National Priorities List, set forth at 40.C.F.R. Part 300, Appendix B, by publication in the Federal Register on _____, _____ Fed. Reg. _____, due to a release of hazardous substances, as that term is defined by Section 104 of CERCLA, 42 U.S.C. § 9604.

WHEREAS, the Massachusetts Department of Environmental Protection, a duly constituted agency organized under the laws of the Commonwealth of Massachusetts, having its principal office at One Winter Street, Boston, Massachusetts 02108 ("MassDEP"), as a result of the release of oil and/or hazardous materials at the Property, as those terms are defined in the Massachusetts Oil and Hazardous Materials Release, Prevention and Response Act, M.G.L. c. 21E, as amended ("Chapter 21E"), has placed [a portion of] the Property on the Massachusetts List of Confirmed Disposal Sites and Locations to be Investigated pursuant to Chapter 21E and the Massachusetts Contingency Plan, 310 CMR 40.0000 (the "MCP"), has classified [such portion of] the Property as a Tier IA disposal site and has assigned to thereto MassDEP Release Tracking Number(s) _____;

WHEREAS, in a document entitled, "Record of Decision, _____ Superfund Site," dated _____ *[include in this definition any ROD Amendments or Explanations of Significant Differences]* (the "ROD"), said ROD being on file at the United States Environmental Protection Agency, Region I ("EPA") Record Center located at One Congress Street, Boston, Massachusetts, EPA, with the concurrence of MassDEP on _____ *[fill in date of State concurrence letter]*, has selected one or more response actions (collectively, the "Selected Remedy") for the Site in accordance with CERCLA, 42 U.S.C. §§ 9601, *et seq.*, and the National Contingency Plan, 40 CFR §§ 300.1, *et seq.* (the "NCP");

WHEREAS, the Selected Remedy is based, in part, upon the restriction of human access to and contact with hazardous substances in soil and groundwater; and the restriction of certain uses and activities occurring in, on, through, over or under the Property;

*[Using one of the two sample paragraphs below as a model, identify the **Performing Party** (the person including a federal agency who developed the GERE and is applying to MassDEP to accept it) and the **Governing Agreement** (the agreement, in addition to the ROD, pursuant to which the Performing Party developed the GERE, such as a consent decree, administrative order on consent, or other agreement; for a fund-lead site, the ROD typically would serve as the Governing Agreement)]*

[WHEREAS, _____, a _____ corporation having a mailing address of _____ (the "Performing Party") is performing a portion of the Selected Remedy pursuant to a consent decree (the "Consent Decree" also referred to herein as the "Governing Agreement") entered into with the United States and the Commonwealth of Massachusetts in the [consolidated] actions captioned *U.S. v. _____*, and *Commonwealth of Massachusetts v. _____*, Docket Numbers _____ and _____ (D. Mass.), respectively;]

[WHEREAS, the United States of America, acting through EPA (the "Performing Party"), having entered into a Superfund State contract for _____ [reference Site and Operable Unit] with the Commonwealth of Massachusetts, acting through MassDEP, entitled, "_____" and dated _____ on file at each agency, and pursuant to the ROD (also referred to herein as the "Governing Agreement"), is performing the Selected Remedy;

[Include the following paragraph only if MassDEP is a Grantee:]

[WHEREAS, MassDEP, pursuant to Sections 3(a) and 6 of Chapter 21E, is authorized to take all action appropriate to secure to the Commonwealth the benefits of CERCLA and to acquire an interest in real property if necessary to carry out the purposes of Chapter 21E, and is willing to accept this Grant as joint Grantee with the United States or as sole Grantee, as the case may be;]

[in the following paragraph, include a reference to the plan for inspecting and reporting on compliance with the GERE, such plan having been developed as part of the Selected Remedy, pursuant to the Governing Agreement (e.g., a consent decree and associated scope of work)]

WHEREAS, EPA has approved a plan entitled "_____" prepared on behalf of _____, by _____, and dated _____ (the "Compliance Inspection and Reporting Plan"), a copy of which is attached hereto as Exhibit B, and which is on file at the EPA Record Center located at One Congress Street, Boston, Massachusetts;

[The following paragraph should only be included if Grantor is responsible in Section 5 ("Obligations and Conditions") for performing operations and maintenance described in the

operation and maintenance plan for the Selected Remedy. Also, this paragraph and the preceding paragraph may be combined, if the ROD and/or SOW contemplate that the operation and maintenance plan will incorporate the compliance inspection and reporting plan as a component of it. In such cases, the compliance inspection and reporting plan should at a minimum be separately noted in the combined paragraph.]

[WHEREAS, EPA has approved a plan entitled “ _____,” prepared on behalf of _____, by _____, and dated _____ (the “Operation and Maintenance Plan”), a copy of which is attached hereto as ExhibitB-1, and which is on file at the EPA Record Center located at One Congress Street, Boston, Massachusetts;] [and]

[If EPA entered into a separate agreement with the landowner, add the following paragraph.]

[WHEREAS, Grantor and the United States of America, acting through EPA, entered into an agreement styled “ _____,” effective _____, EPA Docket Number CERCLA _____ (the “Agreement”), a copy of which is on file at the EPA Record Center located at One Congress Street, Boston, Massachusetts, in which Grantor agreed to perform certain response actions at the Site, including without limitation to implement environmental restrictions and an access easement such as the within Grant, pursuant to Paragraph ____ (“Access and Institutional Controls”) of the Agreement;]

NOW, THEREFORE, pursuant to the terms and provisions of the Governing Agreement [and _____] *[reference any separate agreement with the landowner]* identified above, [the receipt and sufficiency of which consideration is hereby acknowledged,] _____ (“Grantor”), hereby GIVES, GRANTS and CONVEYS to the [UNITED STATES ON BEHALF OF ITS ENVIRONMENTAL PROTECTION AGENCY] [and the] [MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION] *[MassDEP should be included only if MassDEP agrees to be a Grantee]* ([collectively,] “Grantee”), as a gift, with QUITCLAIM COVENANTS, an ENVIRONMENTAL RESTRICTION (“Restriction”) in, on, through, over and under the Property. Said Restriction is subject to the following terms and conditions:

1. Purpose. It is the purpose of this Grant to establish covenants and restrictions and to convey to Grantee real property rights involving access and enforcement, all of which shall run with the land, to facilitate the remediation of environmental contamination, and to protect human health and the environment by reducing the risk of exposure to contaminants.

2. Applicability. The restrictions set forth in Paragraph 3 (“Restricted Uses and Activities”) shall not apply to:

A. any response action undertaken by EPA or MassDEP, or their respective agents, representatives, contractors, subcontractors or employees, pursuant to CERCLA or Chapter 21E, and their respective implementing regulations [; or]

[B. any response action undertaken by the Performing Party, or its agents, representatives, contractors, subcontractors or employees, in accordance with and pursuant to the Governing Agreement, and any approval by EPA and/or MassDEP required thereunder]; *[if the Performing Party has no obligation to perform response actions or operation and maintenance after this Grant has been recorded, or in the atypical circumstance where there is no Governing Agreement in a non-fund-lead response action, delete this paragraph]*

provided, however, that if any such response action results in a change in the areal extent or grade of any portion of the Property required to be restricted under this instrument to ensure that the Selected Remedy is protective of human health and the environment, or if Grantee otherwise determines that it is necessary or appropriate to amend or partially release this instrument as a result of such response actions, then the person performing such response action shall, in accordance with the requirements of Paragraph 14 ("Amendment and Release"), (i) obtain Grantor's agreement to amend this instrument, including the Plan of Restricted Areas, and/or to partially release this instrument, as applicable, (ii) with Grantor's agreement submit an application to Grantee therefor, and (iii) ensure that all actions necessary to effectuate such an amendment and/or partial release are taken. Further provided, and that for response actions described in Paragraph 2.B., above, all costs of performing the foregoing obligations shall be at the Performing Party's sole cost and expense, notwithstanding the provisions of Paragraph 14 ("Amendment and Release").

3. Restricted Uses and Activities. Except as provided in Paragraph 2 ("Applicability"), Paragraph 4 ("Permitted Uses and Activities") and Paragraph 6 ("Emergency Excavation"), Grantor shall not perform, suffer, allow or cause any person to perform any of the following activities in, on, upon, through, over or under [the Property] [the Restricted Area] [each Restricted Area identified below] or any portion thereof, or any of the following uses to be made of [the Property] [the Restricted Area] [each Restricted Area identified below] or any portion thereof:

[if there are multiple restricted areas, identify each such area and list applicable restrictions for each]

[sample restrictions in brackets—site specific restrictions must satisfy the requirements of the Selected Remedy:]

A. [excavation, removal or disposal of any loam, peat, gravel, sand, rock or other mineral or natural resource;]

B. [extraction, consumption or utilization of groundwater underlying the Property for any purpose, including without limitation extraction for potable, industrial, irrigation or agricultural use;]

C. [agricultural use or activity];

D. [residential use or activity];

E. [day care or, for children under eighteen (18) years of age, educational use or activity;]

F. [recreational use or activity;]

G. [hotel or motel use or activity;]

H. [commercial use or activity;]

I. [industrial use or activity;]

J. _____ [list any other restricted uses and/or activities;] and

K. any use or activity which would interfere with, or would be reasonably likely to interfere with, the implementation, effectiveness, integrity, operation, or maintenance of the Selected Remedy, including but not limited to cap(s), cover(s) or other ground covering features of response actions conducted to implement the Selected Remedy; [systems to collect, contain, treat, and discharge groundwater]; [systems or containment areas to excavate, store, treat, and dispose of soils and sediments]; and [systems and studies to monitor implementation of the Selected Remedy, to provide long-term environmental monitoring of on-site groundwater, soils, and sediments, and to ensure that the remedial action is effective in the long-term and protective of human health and the environment]. Reference is made to the Plan of Restricted Areas [and to the As-Built Records, on file on file at the EPA Record Center located at One Congress Street, Boston, Massachusetts], which provide(s) information about the location within the Property and engineering details, respectively, of certain of the foregoing components of the Selected Remedy. *[include references to important site-specific components of the Selected Remedy, including where detailed information about them may be found]*

4. Permitted Uses and Activities. Grantor expressly reserves the right to perform, suffer, or allow, or to cause any person to perform (i) any use or activity in, on, upon, through, over, or under the Property that is not listed in Paragraph 3 ("Restricted Uses and Activities") of this Grant; and (ii) any of the following activities in, on, upon, through, over or under the [the Property] [the Restricted Area] [each Restricted Area identified below], or any portion thereof, or any of the following uses to be made of the [the Property] [the Restricted Area] [each Restricted Area identified below], or any portion thereof:

[if there are multiple restricted areas, each with its own set of permitted uses and activities, then identify each such area and list its permitted uses and activities]

[sample permitted uses and activities:]

[A. Notwithstanding the restriction on excavation set forth in Paragraph 3.A, above, excavation, unless such excavation would permanently modify the areal extent or grade of the [Property] [Restricted Area], is permitted, subject to the following:

[identify any requirements including any applicable health and safety, soil management or ground water/surface water management protocols (attach protocols as appendices and incorporate by reference)]

(i) _____;

(ii) _____; and

(iii) _____;]

[B. Notwithstanding the restriction on _____ set forth in Paragraph 3 __, above, such activities and uses as may be required to perform the requirements of the Operation and Maintenance Plan set forth in Paragraph 5.A;]

[C. Notwithstanding the restriction on _____ set forth in Paragraph 3 __, above, such activities and uses as may be required to perform the requirements of the Restriction Compliance Inspection Plan set forth in Paragraph 5.B;] and

[D. *list any other permitted uses and/or activities;*]

E. The provisions of this Paragraph 4 ("Permitted Uses and Activities") shall not release Grantor or any other party from liability for releases of oil or hazardous substances, nor shall this provision excuse Grantor or any other party from complying with CERCLA, Chapter 21E, or any other applicable federal, State or local laws, regulations or ordinances.

5. Obligations and Conditions. Grantor affirmatively agrees to perform the following activities [and][or] to maintain the following conditions at the Restricted Area in order to maintain the [Selected Remedy]:

A. [The following requirements of the Operations and Maintenance Plan:

(i) _____;

(ii) _____; and

(iii) _____;]

B. [The following requirements of the Restriction Compliance Inspection Plan:

(i) _____;

(ii) _____; and

(iii) _____;] and

C. *[insert other specific activities and conditions set forth in the Governing Agreement or other applicable document, if any]*

6. Emergency Excavation. If it becomes necessary to excavate within the Restricted Area as part of a response to an emergency (e.g., repairing utility lines or responding to a fire or flood), and such excavation could result in a significant risk of harm from exposure to the hazardous substances located within the Restricted Area, the requirements of Paragraph 3.A of this Grant shall be suspended with respect to such excavation for the duration of such response, provided that Grantor:

A. orally notifies the following persons of such emergency as soon as possible but no later than two (2) hours after having learned of such emergency:

i. EPA Office of Site Remediation and Restoration, Emergency Planning and Response Branch; and

ii. MassDEP _____ Regional Office of Emergency Response Section;

or such other persons as [either] Grantee, [respectively], may identify in writing, from time to time, to Grantor for such emergency response notifications;

B. notifies [each] Grantee in writing of such emergency no later than five (5) days after having learned of such emergency [, with a copy to the Performing Party];

C. limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency;

D. implements all measures necessary to limit actual or potential risk to the public health and environment [, including the following:

i. _____;

ii. _____; and

iii. _____;]

E. engages a qualified environmental professional satisfactory to EPA, unless MassDEP is a Grantee, in which case Grantor must instead engage a hazardous waste site cleanup professional, who is a "Licensed Site Professional" ("LSP") as defined in the MCP at 310 CMR 40.0006(12), to oversee the implementation of this Paragraph, and to prepare and oversee the implementation of a written plan which will restore the [Property] [Restricted Area] to a condition which meets or exceeds the performance standards established under the ROD for the Selected Remedy and which is consistent with this Restriction, and to review and evaluate response actions contained in said plan to ensure minimal disturbance of the contaminated soils; Grantor to implement said plan as soon as reasonably possible following such emergency; and a copy of said plan to be submitted to MassDEP and EPA, within ten (10) days of its performance, with a statement from the LSP confirming that the [Property] [Restricted Area] has been restored to the standard described above.

7. Easements. In establishing this Restriction, Grantor hereby grants the following easements for the term of this Grant to [each] Grantee, its [their] agents, contractors, subcontractors, and employees:

A. to pass and repass over the Property for purposes of inspecting the [Property] [Restricted Area] to insure compliance with the terms of this Restriction and for purposes of conducting the activities described in Paragraph 7.B, below; and

B. in, on, through, over and under the [Property] [Restricted Area] for purposes of conducting subsurface investigations, installing groundwater monitoring wells, and conduct other investigations of the [Property] [Restricted Area] and/or response actions consistent with (i) CERCLA and the NCP and/or (ii) Chapter 21E and the MCP, related to the Selected Remedy and/or to the Governing Agreement.

8. Construction. This instrument shall be liberally construed to effect its purpose and the policies and purposes of CERCLA and/or Chapter 21E. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid. Any word or defined term contained in this instrument shall be read as singular, plural, masculine, feminine or neuter as the context so requires.

9. Severability. Grantor hereby agrees, in the event that a court or other tribunal determines that any provision of this instrument is invalid or unenforceable:

A. that any such provision shall be deemed automatically modified to conform to the requirements for validity and enforceability as determined by such court or tribunal; or

B. that any such provision that, by its nature, cannot be so modified, shall be deemed deleted from this instrument as though it had never been included.

In either case, the remaining provisions of this instrument shall remain in full force and effect.

10. Enforcement.

A. Grantor expressly acknowledges that a violation of the terms of this instrument could result in the following:

i. the assessment of penalties and other action by [each] Grantee, and its [their] respective successors and assigns, to enforce the terms of this instrument, pursuant to CERCLA and/or M.G.L. c. 21E, and their respective implementing regulations, and other law and regulations, as applicable; and

ii. upon a determination by a court of competent jurisdiction, the issuance of criminal and civil penalties, and/or equitable remedies which could include the issuance of an order to modify or remove any improvements constructed in violation of the terms of this instrument at Grantor's sole cost and

expense, and/or to reimburse [each] Grantee for any costs incurred in modifying or removing any improvement constructed in violation of the terms of this instrument.

B. Notwithstanding any other provision of this instrument, all rights and remedies (including without limitation sanctions and penalties) available hereunder shall be in addition to, but not in lieu of, any and all rights and remedies (including without limitation sanctions and penalties) at law or in equity, including under CERCLA or Chapter 21E, [and/or pursuant to the Governing Agreement,] which rights and remedies [each] Grantee fully reserves. Enforcement of the terms of this instrument shall be at the discretion of [each] Grantee, and any forbearance, delay or omission to exercise its [their respective] rights under this instrument shall not be deemed to be a waiver by [either] Grantee of such term or any subsequent breach of the same or any other term, or of any of the rights of [either] Grantee under this instrument.

11. Provisions to Run With the Land. This Restriction establishes certain rights, liabilities, agreements and obligations for the Property, or any portion thereof, that shall run with the Property, or any portion thereof, for the term of this Restriction. Grantor hereby covenants for himself/herself/itself and his/her/its executors, administrators, heirs, successors and assigns to stand seized and hold title to the Property, or any portion thereof, subject to this Restriction.

The rights granted to [each] Grantee, its [their] successors and assigns, do not provide, however, that a violation of this Restriction shall result in a forfeiture or reversion of Grantor's title to the Property.

12. Concurrence Presumed. It is agreed that:

A. Grantor and all parties claiming by, through or under Grantor shall be deemed to be in accord with the provisions of this document; and

B. all such parties and any party claiming by, through, or under them, and their respective agents, contractors, sub-contractors and employees, also agree that the Restriction herein established shall not be violated and that their respective interests in the [Property] [Restricted Area] shall be subject to the provisions herein set forth.

13. Incorporation Into Deeds, Mortgages, Leases, and Instruments of Transfer. Grantor hereby agrees to incorporate this Restriction, in full or by reference, into all future deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer, whereby an interest in and/or a right to use the Property, or any portion thereof, is conveyed.

14. Amendment and Release.

A. Amendment. This instrument, including without limitation any of its Exhibits, or the Plan of Restricted Area, may be amended only with the prior, written approval of Grantee. Grantor may propose to Grantee, with a copy to the Performing Party, an amendment of a use or activity restriction set forth in Paragraph 3 ("Restricted

Uses and Activities”), or of a permitted use or activity set forth in Paragraph 4 (“Permitted Uses and Activities”), based upon changed circumstances including without limitation new analytic and engineering data. In the event that Grantor requests such an amendment, Grantor shall comply with such requirements as Grantee may identify for that purpose. Grantor agrees to cooperate with Grantee if it becomes necessary to modify this instrument in order to maintain the continued effectiveness of the Selected Remedy. All amendments shall include [each] Grantee’s signed approval and shall become effective upon recording and/or registration with the appropriate registry of deeds and/or land registration office. MassDEP will provide notice to EPA prior to approving an amendment to the Grant. Such notice shall not be a condition of or a requirement for any such amendment to be effective.

B. Release. [Each] Grantee may release its [respective] interest in the Grant, in whole or in part, in its [respective] sole discretion. MassDEP will provide notice to EPA prior to releasing its interest in the Grant. Such notice shall not be a condition of or requirement for any such release to be effective. This Grant shall not be deemed released unless and until [each] Grantee has released its [respective] interest hereunder. Any such release(s) shall become effective upon recording and/or registration with the appropriate registry of deeds and/or land registration office.

C. Recordation and/or Registration. Grantor hereby agrees to record and/or register with the appropriate registry of deeds and/or land registration office any amendment to and/or release of this instrument, or other document created pursuant to this instrument for which such recording and/or registration is required, within thirty (30) days of the date of having received from Grantee(s) any such amendment, release or other such document executed by [each] Grantee and/or evidencing [each] Grantee’s approval, as appropriate, in recordable form. No more than thirty (30) days from the date of such recording and/or registering of said amendment, release and/or other such document, Grantor shall provide a certified registry copy of the amendment, release and/or other such document to [each] Grantee, with a copy to the Performing Party. At that time, or as soon thereafter as it becomes available, Grantor shall provide [each] Grantee with the final recording and/or registration information for the amendment, release, and/or other such document, certified by said registry. Grantor shall pay any and all recording fees, land transfer taxes and other such transactional costs associated with any such amendment or release.

D. Notice to Local Officials. In accordance with the requirements set forth in 310 C.M.R. §40.1403(7), as amended, and within thirty (30) days after recording and/or Registering any such amendment, release, or other such document, Grantor shall: (i) provide the [City] [Town] of _____ Chief Municipal Officer, Board of Health, Zoning Official and Building Code Enforcement Official with copies of such recorded and/or registered amendment, release or other such document; (ii) publish a legal notice indicating the recording and/or registering of such amendment, release or other such document, and including the information described in 310 C.M.R. §40.1403(7)(b)(1), in a newspaper which circulates in the [City] [Town] of _____; and (iii) provide copies of said legal notice to [each] Grantee

within seven (7) days of its publication.

15. Payment of Future Costs. Grantor shall pay all costs incurred by Grantee not inconsistent with CERCLA or Chapter 21E, as applicable, including attorneys fees and interest, in connection with any request by Grantor for an approval, review or other action by Grantee pursuant to the terms of this instrument, including without limitation (i) an approval, including any presumptive approval, pursuant to Paragraph 4 ("Permitted Uses and Activities") of this instrument and (ii) for an approval, pursuant to Paragraph 14 ("Amendment and Release") of this instrument. Such costs shall be due and payable within thirty (30) calendar days of receipt of demand. Grantee reserves the right to issue any determination that may be appropriate in response to any such request from Grantor only upon receipt of payment in full of such costs.

16. No Dedication Intended. Nothing herein shall be construed to be a gift or dedication of the Property to [either] Grantee or to the general public for any purpose whatsoever.

17. Term. This Restriction shall run [in perpetuity] [for a period of ____ years] and is intended to conform to M.G.L. c. 184, § 26, as amended.

18. Notices.

A. General. Any notice, delivery or other communication permitted or required under this instrument, unless otherwise provided in this instrument, shall be in writing and sent by reliable overnight delivery service, delivered in hand or mailed by postage-paid registered or certified mail, return receipt requested. Notices or other communications shall be deemed given, if by overnight delivery service, on the first business day following deposit with such delivery service; if by hand, on the date of the receipt evidencing the hand delivery thereof; or, if by registered or certified mail, three (3) days after deposit in the United States mails; provided that notice of change of address shall be deemed effective only upon receipt.

B. EPA and MassDEP. Whenever, under the terms of this instrument, written notice is required to be given or a document is required to be sent to Grantee, EPA and/or MassDEP, as the case may be, it shall be directed to both EPA and MassDEP, to the individuals at the addresses specified below, or as otherwise directed in writing by EPA and/or MassDEP, respectively.

As to EPA:

EPA Remedial Project Manager

Superfund Site

United States Environmental Protection Agency, Region I

One Congress Street, Suite 1100, Mailcode HBO

Boston, MA 02114

and to:

EPA Enforcement Counsel

Superfund Site

United States Environmental Protection Agency, Region I
One Congress Street, Suite 1100, Mailcode SES
Boston, MA 02114

As to MassDEP:

Bureau of Waste Site Cleanup
Department of Environmental Protection
One Winter Street, ___th Floor
Boston, MA 02108
Attention: _____ Superfund Site Project Manager

[C. Performing Party. Whenever, under the terms of this instrument, written notice is required to be given or a document is required to be sent to the Performing Party, it shall be directed to the individual at the address specified below, or as otherwise directed in writing by the Performing Party:

Attention: Coordinator for _____ Superfund Site]

19. Assignment. This Grant, including without limitation all easements, rights, covenants, obligations and restrictions inuring to the benefit of [either] Grantee, herein contained, shall be freely assignable by [either] Grantee, in whole or in part, at any time. MassDEP will provide notice to EPA prior to assigning its interest in the Grant. Such notice shall not be a condition of or requirement for any such assignment to be effective.

20. Rights Reserved. Acceptance of this Restriction shall not operate to bar, diminish, nor in any way affect any legal or equitable right of [either] Grantee to issue any future order with respect to the Site or in any way affect any other claim, action, suit, cause of action, or demand which [either] Grantee may have with respect to the Site.

21. Governing Law; Captions. This instrument shall be governed by and interpreted in accordance with the laws of the United States and of the Commonwealth of Massachusetts, as applicable. All captions and headings contained in this instrument are for convenience of reference only, and shall not be used to govern or interpret the meaning or intent of any provision of this document.

22. Effective Date. This Restriction shall become effective upon its recordation with the appropriate registry of deeds and/or land registration office.

No more than thirty (30) days from the date of recording and/or registration, Grantor shall provide [each] Grantee with a certified registry and/or land registration office copy of this instrument. At that time, or as soon as practicable thereafter, Grantor shall provide [each] Grantee with a copy of this instrument, as recorded, certified by said registry and/or land

registration office.

As this Restriction is a gift, no Massachusetts deed excise stamps are affixed hereto, none being required by law.

WITNESS the execution hereof under seal this ____ day of _____, 20__.

[Name of Grantor]

GRANTOR

COMMONWEALTH OF MASSACHUSETTS

_____, ss

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public:

My Commission Expires:

[Include the following paragraph only if MassDEP is a Grantee:]

In accordance with M.G.L. c. 21E, § 6, as amended, the Commissioner of the Department of Environmental Protection hereby approves this Grant of Environmental Restriction and Easement (as to form only).

Date: _____

Commissioner
Department of Environmental Protection

[Include the following paragraph only if MassDEP is a Grantee:]

Upon recording, return to:

Bureau of Waste Site Cleanup
Department of Environmental Protection
One Winter Street, 8th Floor
Boston, MA 02108

Attention: _____ Site Project Manager

List of Exhibits

Exhibit A	Legal Description of the Property
[Exhibit A-1	Legal Description of the Restricted Area]
Exhibit B	Compliance Inspection and Reporting Plan
[Exhibit B-1	Operation and Maintenance Plan]

APPENDIX F-1

SUTTON BROOK DISPOSAL AREA SUPERFUND SITE DE MINIMIS SETTLEMENT
TRUST AGREEMENT

TRUST AGREEMENT

Sutton Brook Disposal Area Superfund Site *De Minimis* Settlement Trust

On this ____ day of _____, 20____, the Sutton Brook Disposal Area Superfund Site PRP Group, an unincorporated association of Settling Defendants (as hereafter defined), (the “PRP Group”), having a mailing address c/o Robert C. Kirsch, Esquire, WilmerHale LLP, 60 State Street, Boston, Massachusetts 02109, and R. Thomas Dorsey and Bennie Underwood, each having a mailing address of de maximus, inc., 450 Montbrook Lane, Knoxville, TN, 37919-2705 collectively (the “Trustee”), hereby agree as follows:

WHEREAS, the Sutton Brook Disposal Area Superfund Site (“Site”) is located in Tewksbury, Massachusetts, and is a federal Superfund Site;

WHEREAS, the United States of America (“United States”) and the Commonwealth of Massachusetts (“State”) have incurred and will continue to incur response costs in connection with the Site;

WHEREAS, a number of potentially responsible parties (“Settling Defendants”) at the Site are entering into a Remedial Design/Remedial Action Consent Decree (“Consent Decree”) with the United States and the State, pursuant to which some of the Settling Defendants will perform certain response actions at the Site pursuant to the Consent Decree (“Performing Settling Defendants”);

WHEREAS, a number of potentially responsible parties at the Site which individually contributed wastes in amounts not exceeding 3% of the total volume of similar wastes contributed by Settling Defendants to the Site and which do not intend to perform the Work described in the Consent Decree (the “*De Minimis* Settling Defendants”) wish to pay their allocated shares of response costs incurred and to be incurred in connection with the Site and to resolve their liability to the United States, the State and the Performing Settling Defendants, pursuant to Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (“CERCLA”), 42 U.S.C. § 9622(g), as set forth in the *de minimis* provisions of the Consent Decree; and

WHEREAS, the Consent Decree will provide for: (1) the *De Minimis* Settling Defendants to make their settlement payments to the trust established pursuant to this Agreement pending the approval by the U.S. District Court for the District of Massachusetts (the “Court”) of the Consent Decree, and (2) distribution of the *De Minimis* Settling Defendants’ payments to or for the benefit of the Performing Settling Defendants, in fulfilling their obligations pursuant to the Consent Decree, upon the Court’s approval of the Consent Decree.

NOW, THEREFORE, the PRP Group and the Trustee declare as follows:

1. Establishment of Trust. The Trustee promptly shall establish a segregated trust account, which shall be known as the “Sutton Brook Disposal Area Superfund Site *De Minimis* Settlement Trust” (“Trust”).

2. Declaration of Purpose. The Trust is established and shall be administered by the Trustee for the purpose of holding, investing and disbursing funds collected from the *De Minimis* Settling Defendants that enter into the Consent Decree among the United States, the State and the Settling Defendants regarding the Site. EPA and the PRP Group are express beneficiaries of this Trust.

2A. Definitions. As used in this Trust Agreement, the following terms shall have the following meanings:

- a. The term “Executive Committee” shall mean the then serving Executive Committee of the PRP Group.
- b. The term “PRP Group” or “Group” shall mean the Sutton Brook Disposal Area Superfund Site PRP Group established pursuant to the Participation Agreement (defined below). Unless otherwise specifically provided, when used in this Trust Agreement, the term PRP Group or Group shall include the Executive Committee, which is authorized to act for and on behalf of the Group.
- c. The term “the Work” shall have the meaning assigned to that term in the Consent Decree.
- d. The term “Participation Agreement” shall mean the agreement entered into by the Members of the PRP Group and provided to the Trustee, which agreement sets forth the manner in which Members of the PRP Group will undertake to comply with the Consent Decree.
- e. The term “EPA” shall mean the United States Environmental Protection Agency.
- f. The term “State” shall mean the Commonwealth of Massachusetts.
- g. The term “MassDEP” shall mean the Massachusetts Department of Environmental Protection.

3. Payments.

- a. The Trustee shall have no authority or responsibility hereunder to collect any contributions to the Trust from any party and shall have no responsibility hereunder or otherwise with respect to the *De Minimis* Settling Defendants’ compliance with the terms of the Consent Decree.
- b. The Trustee shall promptly deposit into the Trust all payments received from or on behalf of *De Minimis* Settling Defendants. The Trustee shall maintain a record of the name and address of each *De Minimis* Settling Defendant making a payment, or, on behalf of which a payment is received, together with the amount and date of the payment.

4. Principal, Interest and Expenses of Trust.

a. All monies deposited in the Trust or earned by the investment or reinvestment of such monies (“Trust Funds”) shall remain in the Trust and may not be withdrawn by any person, except to make the refunds required by Paragraph 6, or payments required by Paragraph 7, or to pay the Trustee’s fees and expenses and the tax return preparation expenses and tax filing as provided in this paragraph and in Paragraphs 12 and 14.

b. The Trust Funds shall be used by the Trustee to pay taxes incurred by the Trust as well as any tax return preparation expenses, and tax filing fees. The remaining Trust Funds may not be withdrawn by any person, except to make the refunds provided under Paragraph 6 or the payments provided under Paragraph 7.

c. The Trustee may deduct from the Trust Fund such fees and expenses of the Trustee as are described in the Schedule attached hereto.

5. Investment of Trust Funds. Subject to the limitations set forth below regarding “Permitted Investments,” the Trustee shall invest and reinvest the principal and income of the Trust and keep the Trust Funds invested in one or more accounts which shall be treated as a single fund without distinction between principal and income. The Trustee may engage the services of an investment adviser or manager, may rely on the advice of such adviser or manager, and may delegate investment decision-making authority to such adviser or manager with respect to management of the Trust Funds. The Trustee shall not be personally liable for any action or inaction taken in good faith reliance on the advice of such adviser or manager, nor for delegation in good faith of investment decision-making authority to such adviser or manager, unless attributable to the Trustee’s gross negligence or willful misconduct. Notwithstanding the foregoing, the Trustee shall invest and reinvest the principal and income of the Trust in only one or more of the following, which shall constitute “Permitted Investments”:

a. any obligation issued or guaranteed by the United States of America or any state or territory thereof, or any agency or instrumentality of the foregoing, or any money fund which invests solely in the foregoing obligations;

b. any obligation issued or guaranteed by any municipality in the United States, or any agency or instrumentality thereof, which is rated A (or better) by Standard & Poor’s Corporation or Moody’s Investor’s Service, Inc. at the time of investment;

c. certificates of deposit of, accounts with, repurchase obligations of, or money funds or other obligations of banks or of corporations endowed with trust powers having capital and surplus in excess of \$100,000,000;

d. certificates of deposit of accounts with, or other obligations of any bank or corporation endowed with trust powers, provided that the full amount of any such certificate of deposit, account, or other obligation is insured by FDIC or FSLIC; and

e. such other investments or investment vehicles as may be recommended from time to time by the Trustee’s professional investment advisor with a view to

assuring adequate current funds for the short term costs of the Work, while seeking a reasonable (in such investment advisor's professional opinion) market-based return on investment designed to fund the long-term implementation of the Work, provided, however, that (i) at no time shall any portion of the Fund be invested in stocks, bonds, or other equity or debt instruments issued by any Member of the PRP Group or any affiliate of any such Member unless such stocks, bonds or other instruments are part of the holdings of a mutual fund or other investment vehicle which is managed by a professional manager not controlled by the Trustee or any of the Members of the PRP Group.

6. Refunds from the Trust. Promptly upon receipt by the Trustee of a notice from the United States stating that (a) the United States and/or the State have decided not to enter into the Consent Decree, and/or (b) the Consent Decree has not been approved and entered by the Court, the Trustee shall refund all contributions previously made to the Trust by the *De Minimis* Settling Defendants. Any such refund shall include the original principal amount of the payment and any earnings from the investment of such amounts, less accrued taxes and expenses paid.

7. Disbursements from the Trust. During the term of this Trust, upon written instructions from the Executive Committee or its designee(s), the Trustee shall cause to be paid such part (or all) of the income and principal of the Trust Funds as the Performing Settling Defendants are obligated to pay pursuant to and in accordance with the Consent Decree, including but not limited to those costs specified in Paragraphs 58-63 of the Consent Decree. In this regard, the Trustee shall pay all bills and invoices approved and directed for payment in writing by the Executive Committee or its designee(s) to or on behalf of the Performing Settling Defendants. Copies of such directions for payment of approved bills and invoices shall be sent to EPA and MassDEP by the Group or its designee(s) at the time they are forwarded to the Trustee until such time as EPA issues its approval of the Final Remedial Construction Report to be submitted to EPA and MassDEP pursuant to Section 7.7 of the SOW; thereafter, copies shall be sent to EPA and MassDEP by the Group or its designee(s) upon request by EPA, or MassDEP, respectively. In addition to the payments required by Paragraphs 59 and 60 of the Consent Decree, bills and invoices to be paid by the Trustee, after approval by the Executive Committee or its designee(s), may include, but are not limited to, bills from Contractor(s) and bills incurred with respect to the Work. The Trustee shall be entitled to rely upon the Executive Committee's or its designee(s)' said directions for the payment of bills and invoices as conclusively establishing that the items covered thereby fall within the categories of costs authorized for payment under the terms of this Trust Agreement.

8. Notices. All notices, demands, and requests given or required to be given hereunder shall be deemed given if delivered by hand, as evidenced by a signed receipt; delivered by a recognized overnight courier or by express mail, as evidenced by an appropriate receipt; or mailed by registered or certified United States mail, postage prepaid, return receipt requested, and shall be addressed as follows:

As to the United States:	<p>Chief, Environmental Enforcement Section Environment and Natural Resources Division U.S. Department of Justice P.O. Box 7611 Washington, D.C. 20044-7611</p> <p>and</p> <p>Chief, Environmental Defense Section Environment and Natural Resources Division U.S. Department of Justice P.O. Box 23986 Washington, D.C. 20026-3986</p> <p>and</p> <p>Don McElroy EPA Project Coordinator U.S. EPA, Region I One Congress Street, Suite 1100 (HBT) Boston, MA 02114-2023</p>
As to EPA:	<p>Don McElroy EPA Project Coordinator U.S. EPA, Region I One Congress Street, Suite 1100 (HBT) Boston, MA 02114-2023</p>
As to the State:	<p>Louis Dundin, Assistant Attorney General Environmental Protection Division Massachusetts Office of the Attorney General One Ashburton Place Boston, MA 02108</p>
with a copy to:	<p>Dorothy Allen State Project Manager Sutton Brook Disposal Area Superfund Site Massachusetts Department of Environmental Protection Bureau of Waste Site Cleanup One Winter Street, 8th Floor Boston, MA 02108</p>

As to the PRP Group:	Sutton Brook Disposal Area Site PRP Group c/o Robert C. Kirsch, Esquire WilmerHale LLP 60 State Street Boston, Massachusetts 02019
As to the Trustee:	R. Thomas Dorsey de maximus, inc. 450 Montbrook Lane Knoxville, Tennessee 37919-5052

9. Concerning the Trustee. The Trustee shall act as a trustee only and not personally; and in respect of any contract, obligation or liability made or incurred by the Trustee in good faith, all persons shall look solely to the assets of the Trust and not to the Trustee personally. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, including in following instructions provided pursuant to the provisions of this Trust Agreement with respect to the payment of monies hereunder. The Trust and the Performing Settling Defendants shall indemnify and hold harmless the Trustee from and against any personal liability by reason of any action or conduct in its official capacity, made in good faith. The Trustee (a) shall not be responsible for the Consent Decree, or for determining or compelling compliance therewith, and shall not otherwise be bound thereby; (b) shall be obligated only for the performance of such duties as are expressly and specifically set forth in this Trust Agreement on its part to be performed, and no implied duties or obligations of any kind shall be read into this Trust Agreement against or on the part of the Trustee; (c) may consult counsel satisfactory to it, including in-house counsel, and the opinion or advice of such counsel in any instance shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion or advice of such counsel. In no event shall the Trustee be liable for indirect, punitive, special or consequential damage or loss (including but not limited to lost profits) whatsoever, even if the Trustee has been informed of the likelihood of such loss or damage and regardless of the form of action.

10. Disputes. In the event a dispute of any kind arises in connection with this Trust Agreement (including any dispute concerning indemnification of the Trustee), the Trustee may, in his/her sole discretion, elect to commence an interpleader action and pay all or any portion of the Trust Funds to the Court and provide a complete accounting of all monies paid into the Trust or paid out of the Trust by the Trustee. In the event of such payment, it is understood that Trustee will have no further obligation to the *De Minimis* Settling Defendants, EPA and/or the PRP Group with respect to the amount so paid.

11. Inalienability of Interests of Beneficiaries. The interest of each beneficiary in the income or principal of the Trust hereunder shall be free from the control or interference of any creditor and shall not be subject to assignment, attachment, anticipation or alienation.

12. Tax Treatment. It is intended that this Trust be a Qualified Settlement Fund ("QSF") under Internal Revenue Code Section 468B and Reg. 1.468(B) and taxable as such, and

not as a partnership, corporation or grantor trust, that is, a trust whose property is deemed to be owned by one or more grantors or other persons pursuant to one or more of the Internal Revenue Code Sections 671 through 678. The Trustee (or a tax administrator engaged by the Trustee at the expense of the Trust) shall file tax returns for the Trust on the assumption that it is a QSF, unless and until it is determined or the Trustee otherwise has reason to believe the Trust is other than a QSF. In the event this Trust is determined, or is in the sole judgment of the Trustee at risk of being determined, to be other than a trust which is taxable as such a QSF and it is prudent to reorganize the Trust so that it shall be such a QSF, then the Trustee is authorized to execute such amendment to this Trust Agreement, restatements of this Trust Agreement or new trust agreement, instruments of assignment, plans of reorganization and other documents as are appropriate to enable the Trust or a successor to the assets of the Trust to be a trust which is taxable as such a QSF; provided always, in no event shall the effect of any such reorganization or other action be to change the purposes hereof, divert the assets of this Trust otherwise than for its original purposes set forth herein or enlarge the powers or responsibilities of the Trustee.

13. Accounting. By forty-five (45) days after the lodging of the Consent Decree, the Trustee shall prepare a statement setting forth each payment received by the Trustee, the identity of the *De Minimis* Settling Defendant making such payment or on behalf of which the payment was made, the date such payment was received, the total amount of Trust Funds in the Trust, the amount of any interest and/or income earned on the Trust Funds, and the amount of any taxes, fees and expenses paid by the Trustee. The Trustee shall prepare an updated accounting quarterly thereafter until the Trust is terminated, which accounting shall be prepared on an accrual basis and in accordance with generally accepted accounting procedures. Said accountings shall be sent to the United States, the State and the PRP Group as provided in Paragraph 8.

14. Trustee Compensation. The Trustee shall receive compensation for its services as a Trustee under this Trust Agreement pursuant to the Fee Schedule attached hereto. The Fee Schedule shall be binding upon the Trustee and the PRP Group, and any change to the Fee Schedule shall become effective only upon the written approval of the PRP Group and the Trustee.

15. Appointment of Successor Trustee.

- a. The Trustee may resign at any time by delivering his/her resignation, in writing, to the United States, such resignation to take effect upon the appointment of a successor Trustee.
- b. The PRP Group may remove the Trustee at any time, by delivering notice of such removal in writing to the Trustee, such removal to take effect ten days thereafter, or on such later date that may be specified in the notice.
- c. Any vacancy in the office of the Trustee created by bankruptcy, insolvency, death, disability, resignation, removal or succession, as provided herein, shall be filled by an appointment in writing of a successor Trustee.

- d. Any successor Trustee shall be appointed by the PRP Group, with approval by EPA.
- e. Acceptance of appointment as a successor Trustee shall be in writing and shall be mailed to the PRP Group as provided in Paragraph 8.
- f. A successor trustee shall have all of the rights, powers, duties, authority and privileges as if initially named as a Trustee hereunder.
- g. A copy of each instrument of resignation, removal, appointment and acceptance of appointment shall be attached to an executed counterpart of this Trust Agreement in the custody of the PRP Group and a copy shall be furnished to the United States and the State, no later than ten business days after its effective date.

16. Express Powers of the Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Trust Agreement or by law, the Trustee is expressly authorized and empowered:

- a. Payment of Expenses of Administration. To incur and pay any and all charges, taxes, and expenses upon or connected with the Trust and the Trust Funds in the discharge of their fiduciary obligations under this Trust Agreement.
- b. Retention of Property. To hold and retain all or any part of the Trust Funds in the form in which the same may be at the time of the receipt by the Trustee, as long as they shall deem advisable, notwithstanding that the same may not be authorized by the laws of any state or rules of any court for the investment of trust funds, and without any liability for any loss of principal or income by reason of such retention.
- c. Preservation of Principal. Notwithstanding any other provision in this Trust Agreement, to at all times hold, manage, invest, and reinvest the Trust Funds in a manner designed to preserve the accrued income and principal of the Trust Fund for the purposes of the Trust Funds.
- d. Retention of Investment Adviser and Other Consultants. To engage the services of (and pay compensation to) an investment adviser, accountants, agents, managers or other consultants with respect to the management of investments of the Trust Funds, the management of the Trust Funds, or any other matters.
- e. Execution of Documents of Transfer. To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.
- f. Litigation. To institute litigation in the name of the Trust upon direction from the PRP Group, and to cooperate with the Group in its prosecution or defense of litigation.

g. Discretion in Exercise of Powers. To do any and all other acts which they shall deem proper to effectuate the purposes hereof and to exercise the powers specifically conferred upon the Trustee by this Trust Agreement.

17. Instructions to the Trustee. Notwithstanding anything herein to the contrary, the Trustee is hereby directed to do the following in addition to other duties set forth in other provisions of this Trust Agreement:

a. Have prepared quarterly financial reports during performance of the construction portion of the Work describing the manner in which the assets of the Trust are then invested and the current market value of such assets, as well as the obligations, income, and expenses of the Trust. Copies of such reports shall be transmitted in writing to the PRP Group, to the PRP Group's Project Coordinator (provided the Trustee has received notice of the name and address of said Project Coordinator from the Executive Committee) and, upon request, to EPA or MassDEP, respectively.

b. Have prepared annual financial statements during performance of the construction portion of the Work and the operation and maintenance portion of the Work describing the manner in which the assets of the Fund are then invested and the current market value of such assets, as well as the obligations, income, and expenses of the Trust. All financial statements shall be prepared on an accrual basis, and shall be in accordance with Generally Accepted Accounting Principles, applied on a consistent basis. Copies of such statements shall be transmitted in writing to the PRP Group, to the Group's Project Coordinator (provided the Trustee has received notice of the name and address of said Project Coordinator from the Executive Committee) and to EPA and MassDEP.

c. Advise, consult and confer with and otherwise inform the PRP Group upon any request by the Group or with respect to matters arising out of this Trust Agreement, administration of the Trust, or any other matter which the Trustee, in their discretion, deem appropriate to bring to the attention of the PRP Group.

d. Have maintained records of all actions taken by the Trustee with respect to matters arising out of this Trust Agreement or administration of the Trust. Copies of said records shall be provided to the PRP Group upon request, and upon termination of this Trust said records shall be transmitted, together with all other records of the Trustee, to the PRP Group.

The Trustee shall have the right to assume and fully rely upon, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any Member of the Group has occurred.

18. Special Provisions Relating to EPA's Takeover of the Work. If, at any time during the term of this Trust Agreement, EPA implements a "Work Takeover" pursuant to the terms of the Consent Decree and intends to direct payment of monies from the Trust Fund to pay for performance of Work during the period of such Work Takeover, EPA, with a copy to

MassDEP, shall notify the Trustee in writing of EPA's commencement of such Work Takeover. Upon receiving such written notice from EPA, the disbursement procedures set forth in Paragraph 7 hereof shall immediately be suspended, and the Trustee shall thereafter make payments from the Trust Fund only to such person or persons as EPA, with a copy to MassDEP, may direct in writing from time to time for the sole purpose of providing payment for performance of Work required by the Consent Decree. Further, after receiving such written notice from EPA, the Trustee shall not make any disbursements from the Trust Fund at the request of the PRP Group, including its representatives and/or contractors, or of any other person except at the express written direction of EPA. If EPA ceases such a Work Takeover in accordance with the terms of the Consent Decree, EPA, with a copy to MassDEP, shall so notify the Trustee in writing and, upon the Trustee's receipt of such notice, the disbursement procedures specified in Paragraph 7 hereof shall be reinstated.

19. Choice of Law. This Trust Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Massachusetts, except to the extent that Federal law shall apply to questions arising under CERCLA or the National Contingency Plan, including any amendment thereto.

20. Consent to Jurisdiction and Services. The Trustee absolutely and irrevocably consents and submits to the jurisdiction of the courts of the Commonwealth of Massachusetts and of any Federal court located in said state in connection with any actions, proceedings or disputes arising out of or relating to this Trust Agreement. In any such action, proceeding or dispute, the Trustee hereby absolutely and irrevocably waives personal service of any summons, complaint, declaration or other process provided that the service thereof is made by certified or registered mail directed to the Trustee at its address in accordance with Paragraph 8.

21. Termination. This Trust Agreement will terminate upon the disbursement of all of the Trust Funds in accordance with the provisions of Paragraph 7.

22. Modifications. This Trust Agreement may not be altered or modified without the express written consent of EPA, after written notice to MassDEP, and the PRP Group.

23. Reproduction of Documents. This Trust Agreement and all documents relating hereto, including, without limitation, (a) consents, waivers and modifications which may hereafter be executed, and (b) certificates and other information previously or hereafter furnished, may be reproduced by any means. Any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding, whether or not the original is in existence and whether or not such reproduction was made by the Trustee in the regular course of business, and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

24. Counterparts. This Trust Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Trustee hereunder has caused this Declaration to be executed as of the day and year first written above.

R. Thomas Dorsey
de maximus, inc.
450 Montbrook Lane
Knoxville, Tennessee 37919-2705

As joined in by the undersigned, who hereby consents to serving as Trustee and agrees to be bound by and perform in accordance with the terms and provisions of this Trust Agreement.

Bennie Underwood
de maximus, inc.
450 Montbrook Lane
Knoxville, Tennessee 37919-2705

DECLARATION OF TRUST
SUTTON BROOK DISPOSAL AREA SUPERFUND SITE
DE MINIMIS TRUST

WITNESS the execution hereof by the undersigned on behalf of the Sutton Brook Disposal Area Superfund Site PRP Group as of the date of this Trust Agreement

Name _____

Title _____

Address _____

Telephone _____

PROFESSIONAL SERVICES RATE SCHEDULE
As of August, 2009

FUND ADMINISTRATION (hourly)

Fund Administrator	\$ 150.00
Fund Officer	\$ 115.00
Accountant	\$ 95.00
Account Support	\$ 60.00

SUPPORT SERVICES (hourly)

Records Coordinator/Administrative Support	\$ 50.00 - 70.00
Word Processing Support	\$ 45.00 - 55.00

PERSONNEL CHARGES

- Management and technical personnel time charges will be invoiced according to the Rate Schedule above.
- Personnel time charges for direct project support activities such as report typing and reproduction are invoiced according to the Rate Schedule above. Charges include indirect support staff, text processing, equipment, computer connect charges, and nominal communication charges.
- All time is rounded to the nearest one-quarter hour.

TRAVEL AND LIVING EXPENSES

- Travel and living expenses are charged at cost plus 3%.

OTHER CHARGES AND REIMBURSABLE EXPENSES

- All project-related purchases will be itemized and invoiced at cost plus 3%, including materials, telephone/teleconference charges, postage, photocopying, overnight mailings, fees, equipment purchased, and other costs incurred specifically for the project.

Year-end reports for tax purposes showing items of income and expenses are billed at \$200 plus \$8.00 per participant for ERT filings. Tax preparation for a QSF is approximately \$200 but may be higher for funds with substantial investments.

Fees are subject to change on an annual basis. Any change will be subject to written approval from the PRP Group.

APPENDIX F-2

SUTTON BROOK DISPOSAL AREA SUPERFUND SITE SETTLEMENT TRUST
AGREEMENT

**DECLARATION OF TRUST
SUTTON BROOK DISPOSAL AREA
SUPERFUND SITE SETTLEMENT TRUST**

THIS AGREEMENT (“Trust Agreement”) establishing the Sutton Brook Disposal Area Superfund Site Settlement Trust (“Trust”) is made this ____ day of _____, 20____ by and among the Grantors identified in Appendix A hereto whose authorized representatives have executed this Trust Agreement, and the Trustee(s) identified in Appendix B hereto who have executed this Trust Agreement;

WHEREAS, the Grantors have entered into a Consent Decree with the United States and the Commonwealth of Massachusetts (“Commonwealth”) with respect to the Sutton Brook Disposal Area Superfund Site (the “Consent Decree”), and have entered into a separate agreement known as the Sutton Brook Disposal Area Superfund Site Participation Agreement (the “Participation Agreement”) (a current copy of which will be provided to the Trustee(s));

WHEREAS, monies and letters of credit from the Grantors will be transferred to this Trust for purposes of funding the performance of the Work (as defined in the Consent Decree), after the lodging of the Consent Decree with the United States District Court for the District of Massachusetts (the “Court”); and

WHEREAS, the Trustee(s) will hold, manage, invest, reinvest and disburse the monies contributed to the Trust, consistent with the Consent Decree and the Participation Agreement, together with any other property hereafter conveyed, assigned, transferred or paid to them, as Trustee(s), in Trust, subject to the terms, provisions and conditions hereinafter set forth.

NOW, THEREFORE, the Grantors and the Trustee(s) agree as follows:

SECTION 1. DEFINITIONS. As used in this Trust Agreement:

(a) The term “Consent Decree” shall mean the Consent Decree (a copy of which will be provided to the Trustee(s)) lodged with and approved by the Court and entered into by the United States and the Commonwealth with certain potentially responsible parties with respect to the Sutton Brook Disposal Area Superfund Site located in Tewksbury, Massachusetts.

(b) The term “Executive Committee” shall mean the then serving Executive Committee of the Sutton Brook Disposal Area PRP Group.

(c) The term “Settling Defendants” shall mean those signatories to the Consent Decree that are listed in Appendices D-1, D-2 and D-3 to the Consent Decree.

(d) The term “Sutton Brook Site” shall have the meaning assigned to the term “Site” in the Consent Decree.

(e) The term “Grantors” shall mean those Settling Defendants which are listed on Appendix A hereto, whose authorized representatives have executed this Agreement. The Grantors also are “Members” under the terms of the Participation Agreement (as hereinafter defined).

(f) The term “Trustee(s)” shall mean the individual(s) listed in Appendix B hereto and any successor or successors to such individual(s) who are acting as Trustee(s) hereunder.

(g) The term “Group” shall mean the Sutton Brook Disposal Area Superfund Site PRP Group established pursuant to the Participation Agreement.

(h) The term “ROD” shall mean the Record of Decision appended to the Consent Decree, as said ROD may hereafter be modified.

(i) The term “the Work” shall have the meaning assigned to that term in the Consent Decree.

(j) The term “Contractor” shall mean the person(s) or entity(ies) selected and engaged by the Group pursuant to the provisions of the Participation Agreement for the purpose of performing the Work.

(k) The term “SOW” shall mean the Statement of Work attached to the Consent Decree, as said Statement of Work may hereafter be modified from time to time in accordance with the terms of the Consent Decree.

(l) The term “Participation Agreement” shall mean the agreement entered into by Grantors and provided to the Trustee(s), which agreement sets forth the manner in which Grantors will undertake to pay for the Work and otherwise comply with the Consent Decree.

(m) The term “EPA” shall mean the United States Environmental Protection Agency.

(n) The term “State” shall mean the Commonwealth of Massachusetts.

(o) The term “MassDEP” shall mean the Massachusetts Department of Environmental Protection.

(p) The term “Oversight Costs” shall have the meaning set forth in the Consent Decree.

SECTION 2. NAME AND PURPOSE OF THE TRUST

The corpus of this Trust shall be known as the Sutton Brook Disposal Area Superfund Site Settlement Trust Fund (the “Fund”). The purpose of the Fund is to obtain, hold, invest, and disburse funds in order to satisfy the obligations of the Grantors pursuant to the Consent Decree. The parties hereto acknowledge and agree that EPA is a beneficiary of the Trust hereby created for purposes of ensuring the full and final completion of the Work under the Consent Decree.

SECTION 3. CONTRIBUTIONS TO THE FUND

(a) Payments by Grantors into the Fund. The Grantors have agreed to make contributions from time to time to the Fund in the form of cash or letters of credit to cover the projected cost of the Work in such amounts as are required under the terms of the Participation Agreement.

(b) Nature of Contributions by Grantors. All contributions by the Grantors to the Fund shall be made in immediately available funds or by irrevocable letters of credit in such standard form as shall be approved in writing by the Executive Committee and by EPA. All such contributions, together with the earnings thereon, shall be held as a trust fund for the payment of the costs and expenses as in this Trust Agreement provided. Contributions made by Grantors shall not be construed as fines, penalties or monetary sanctions.

(c) No Transferability of Interest. The interest of the Grantors herein, and their obligation to provide funds and/or letters of credit under this Section, shall not be transferable, except to a successor corporation or other entity, and then only with the express written consent of the Group.

SECTION 4. DISPOSITIVE PROVISIONS

(a) Payment of Income and Principal. During the term of this Trust, upon written instructions from the Executive Committee or its designee(s), the Trustee(s) shall cause to be paid such part (or all) of the income and principal of the Fund as is necessary to pay costs incurred in connection with the administration of this Trust (but only if and to the extent that such costs are not paid by the Group in accordance with Section 9 hereof) and the performance, supervision and administration of the response actions and all other activities which are required, or otherwise deemed appropriate by the Group, to be conducted under, pursuant to or in connection with the Consent Decree and all of the documents appended thereto or referenced therein. In this regard, the Trustee(s) shall pay all bills and invoices approved and directed for payment in writing by the Executive Committee or its designee(s). Copies of such directions for payment of approved bills and invoices shall be sent to EPA and MassDEP by the Group or its designee(s) at the time they are forwarded to the Trustee(s) until such time as EPA issues its approval of the Final Remedial Construction Report to be submitted to EPA and MassDEP pursuant to Section 7.7 of the SOW; thereafter, copies shall be sent to EPA and MassDEP by the Group or its designee(s) upon request by EPA or MassDEP, respectively. Bills and invoices to be paid by the Trustee(s), after approval by the Executive Committee or its designee(s), include, but are not limited to, bills from Contractor(s) and bills for oversight or administration costs incurred with respect to the Work. The Trustee(s) shall be entitled to rely upon the Executive Committee's or its designee(s)' said directions for the payment of bills and invoices as conclusively establishing that the items covered thereby fall within the categories of costs authorized for payment under the terms of this Trust Agreement.

(b) No Authority to Conduct Business. The purpose of the Fund is limited to the matters set forth herein, and this Trust Agreement shall not be construed to confer upon the Trustee(s) any authority to carry on any business or activity for profit or to divide the gains therefrom among the Grantors. While this Trust Agreement is in effect, disbursements from the Fund are to be governed exclusively by the express terms of this Trust Agreement.

(c) Time of Termination of Trust. This Trust shall terminate upon the satisfaction of all of the Grantors' obligations (except for the document retention obligations set forth in the Consent Decree) under the Consent Decree pursuant to Paragraph 53 of the Consent Decree; provided, however, that this Trust may be terminated at an earlier date if such termination (i) is authorized by a vote of eighty percent (80%) of the total Voting Power of the Grantors (as

Members) under the terms of the Participation Agreement and (ii) is approved in writing by EPA, after notice to MassDEP.

(d) Distribution of Fund Upon Termination.

(i) Upon termination of this Trust following satisfaction of all of the Grantors' obligations under the Consent Decree (except for the document retention obligations set forth in the Consent Decree) pursuant to Paragraph 53 of the Consent Decree, the Trustee(s) shall liquidate the assets of the Fund and thereupon distribute the remaining Trust property including all accrued accumulated and undistributed net income, to the Grantors (as Members) in proportion to their then respective percentage shares of Shared Costs under the terms of the Participation Agreement. If any Grantor, or its successor, shall have defaulted with respect to its obligations under the Participation Agreement and shall remain in default at the time of termination hereunder, or if any Grantor, or its successor, cannot be located within thirty (30) days after the termination date after diligent effort, the share of such defaulting or missing Grantor of the Trust shall be deemed to be forfeited, and the Trustee(s) shall distribute such forfeited share to the remaining Grantors in proportion to their then-existing respective percentage shares of Shared Costs under the terms of the Participation Agreement, in order to take into account the shares of those Grantors that are not entitled to a distribution.

(ii) Upon termination of this Trust following an authorizing vote by the Grantors and approval in writing by EPA, after notice to MassDEP, as aforesaid, the Trustee(s) shall liquidate the assets of the Fund and thereupon distribute the remaining trust property in accordance with the instructions set forth in said authorizing vote and approval.

(e) Alterations, Amendments, and Revocation. This Trust Agreement may be altered, amended, or revoked from time to time by an instrument in writing executed by the Trustee(s) and by a vote of at least sixty-six and 2/3s (66.66%) percent of the eligible Voting Power of the Grantors (as Members) as provided in the Participation Agreement; provided, however, that no such alteration, amendment, or revocation may conflict with or modify in any respect the obligations of the Settling Defendants under the Consent Decree, and provided further (1) that any alteration, amendment, or revocation shall be subject to approval by EPA, after notice to MassDEP, and (2) that Sections 8 and 12 hereof shall not be revoked and shall not be altered or amended to limit the effect thereof with respect to acts or omissions taken or made prior to such alteration or amendment.

SECTION 5. TRUSTEE(S) MANAGEMENT

Subject to the limitations set forth below regarding "Permitted Investments," the Trustee(s) shall invest and reinvest the principal and income of the Fund and keep the Fund invested in one or more accounts which shall be treated as a single fund without distinction between principal and income. All investments shall be made so as to at all times provide sufficient liquidity to meet the anticipated cash needs of the Fund. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee(s) shall discharge their duties with respect to the Fund solely in the interest of the accomplishment of the purposes and objectives of this Trust Agreement. The Trustee(s) may engage the services of an investment adviser or manager, may rely on the advice of such adviser or manager, and may delegate investment

decision-making authority to such adviser or manager with respect to management of the Fund. The Trustee(s) shall not be personally liable for any action or inaction taken in good faith reliance on the advice of such adviser or manager, nor for delegation in good faith of investment decision-making authority to such adviser or manager, unless attributable to the Trustee(s)' gross negligence or willful misconduct. The Trustee(s) shall keep or arrange to be kept full and accurate accounting of all contributions to and disbursements from the Fund. Notwithstanding the foregoing, the Trustees shall invest and reinvest the principal and income of the Fund in only one or more of the following, which shall constitute "Permitted Investments":

- (a) any obligation issued or guaranteed by the United States of America or any state or territory thereof, or any agency or instrumentality of the foregoing, or any money fund which invests solely in the foregoing obligations;
- (b) any obligation issued or guaranteed by any municipality in the United States, or any agency or instrumentality thereof, which is rated A (or better) by Standard & Poor's Corporation or Moody's Investor's Service, Inc. at the time of investment;
- (c) certificates of deposit of, accounts with, repurchase obligations of, or money funds or other obligations of banks or of corporations endowed with trust powers having capital and surplus in excess of \$100,000,000;
- (d) certificates of deposit of accounts with, or other obligations of any bank or corporation endowed with trust powers, provided that the full amount of any such certificate of deposit, account, or other obligation is insured by FDIC or FSLIC; and
- (e) such other investments or investment vehicles as may be recommended from time to time by the Trustee(s)' professional investment advisor with a view to assuring adequate current funds for the short term costs of the Work, while seeking a reasonable (in such investment advisor's professional opinion) market-based return on investment designed to fund the long-term implementation of the Work; provided, however, that (i) at no time shall any portion of the Fund be invested in stocks, bonds, or other equity or debt instruments issued by any Grantor or any affiliate of any Grantor unless such stocks, bonds or other instruments are part of the holdings of a mutual fund or other investment vehicle which is managed by a professional manager not controlled by the Trustee(s) or any of the Grantors and (ii) the Trustee(s) shall keep the Minimum Liquid Amount of the Fund invested in one or more of the investments identified in items (a) through (d) immediately above. The term "Minimum Liquid Amount" shall mean, at any time of calculation, the sum of the following: (i) the amount of funds expected to be necessary to pay for Work required under the Consent Decree during the six month period immediately following the date of calculation and (ii) the amount of funds expected to be necessary to pay for Oversight Costs (as defined by the Consent Decree) to be billed during the one year period immediately following the date of calculation, all as determined by the Trustee(s) in consultation with the Executive Committee. For purposes of the preceding sentence, the Trustee(s), in consultation with the Executive Committee, may so determine the "Minimum

Liquid Amount” once per year either at the beginning of each calendar year or the beginning of each fiscal year of the Fund.

SECTION 6. EXPRESS POWERS OF TRUSTEE(S)

Without in any way limiting the powers and discretion conferred upon the Trustee(s) by the other provisions of this Trust Agreement or by law, the Trustee(s) are expressly authorized and empowered:

(a) Payment of Expenses of Administration. To incur and pay any and all charges, taxes, and expenses upon or connected with the Fund in the discharge of its/their fiduciary obligations under this Trust Agreement. In accordance with Section 9 hereof, all such payments shall either be made by the Group on behalf of the Trustee(s) or be reimbursed by the Group to the Trustee(s). Only if, and to the extent that, any such payments are not so paid or reimbursed by the Group, then such payments shall be made by the Trustee(s) using the assets of the Fund.

(b) Retention of Property. To hold and retain all or any part of the Fund in the form in which the same may be at the time of the receipt by the Trustee(s), as long as it/they shall deem advisable, notwithstanding that the same may not be authorized by the laws of any state or rules of any court for the investment of trust funds, and without any liability for any loss of principal or income by reason of such retention.

(c) Preservation of Principal. Notwithstanding any other provision in this Trust Agreement, to at all times hold, manage, invest, and reinvest the assets of the Fund in a manner designed to preserve the accrued income and principal of the Fund for the purposes of the Fund.

(d) Retention of Investment Adviser and Other Consultants. To engage the services of (and pay compensation to) an investment adviser, accountants, agents, managers or other consultants with respect to the management of investments of the Fund, the management of the Fund, or any other matters.

(e) Execution of Documents of Transfer. To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.

(f) Litigation. To institute litigation in the name of the Fund upon direction from the Executive Committee, and to cooperate with the Group in its prosecution or defense of litigation.

(g) Discretion in Exercise of Powers. To do any and all other acts which they shall deem proper to effectuate the purposes hereof and to exercise the powers specifically conferred upon them by this Trust Agreement.

SECTION 7. GOVERNANCE OF THE TRUSTEE(S)

(a) Action may be taken, except as otherwise provided herein, by a majority of the Trustee(s) then in office at any meeting of the Trustee(s), at which a quorum is present or by the sole Trustee if there is only one Trustee then serving hereunder. At any meeting of the Trustee(s), if there is more than one Trustee then serving hereunder, a majority of the Trustee(s)

then in office shall constitute a quorum for the transaction of business. Less than a quorum may adjourn any meeting from time to time, and the meeting may be held as adjourned without further notice. Meetings may be held by telephone conference.

(b) Any action may be taken by the Trustee(s) without a meeting if all the Trustee(s) then in office consent to the action in writing and such written consents are filed with the records of the Trustee(s).

(c) Any action of the Trustee(s) required to approve an amendment of this Trust Agreement or the termination of this Trust as provided herein shall require the affirmative vote and signatures of a majority of the Trustee(s) then in office or of the sole Trustee if there is only one Trustee then serving hereunder.

SECTION 8. ADVICE OF COUNSEL

After notice to and, if so requested, consultation with the Executive Committee, the Trustee(s) may from time to time consult with counsel, who may be counsel to any of the Grantors, if authorized by the Group, with respect to any question arising as to compliance with this Trust Agreement. The Trustee(s) shall be fully protected in acting in reliance upon the advice of counsel.

SECTION 9. TRUSTEE COMPENSATION; COSTS OF ADMINISTRATION

The Trustee(s) may receive reasonable compensation as determined by the Group for its/their services as Trustee(s) under this Trust Agreement. Such compensation shall be paid to the Trustee(s) by the Group. The Trustee(s) also shall be reimbursed by the Group for expenses, including travel expenses, reasonably required and incurred in the performance of its/their duties as Trustee(s). Additionally, the Group shall either pay or reimburse the Trustee(s) for all other costs incurred by or on behalf of the Trustee(s) in connection with the administration of this Trust.

SECTION 10. NUMBER OF TRUSTEE(S) AND APPOINTMENT OF SUCCESSOR TRUSTEE(S)

(a) Number of Trustee(s). There shall at all times be at least one Trustee, appointed by the Executive Committee. The number of Trustee(s) may be increased or reduced (so long as there is always at least one Trustee) by the Executive Committee at any time and from time to time, and the new positions created thereby shall be filled by the Executive Committee.

(b) Vacancy Caused by Resignation or Removal. Any Trustee may resign at any time by delivering such Trustee's resignation in writing to the Executive Committee, or the Executive Committee may remove any Trustee by delivering notice of such removal in writing to such Trustee, such resignation or removal to take effect within thirty (30) days after delivery of the notice of resignation or removal or upon the acceptance of appointment in writing by a successor Trustee, whichever is earlier. The Executive Committee shall provide a copy of the notice of resignation or removal to EPA, with a copy to MassDEP, within seven (7) days of its receipt of a notice of resignation from the Trustee(s) or within (7) days of its delivery of a notice of removal to the Trustee(s). Notwithstanding the foregoing, the resignation or removal of the sole Trustee

shall not take effect until the acceptance of appointment in writing by his or her successor Trustee.

(c) Appointment of Successor Trustee(s). Any vacancy in the office of Trustee created by death, resignation or removal by the Executive Committee of a Trustee shall be filled by the Executive Committee by an appointment in writing of a successor Trustee. Any successor Trustee shall be approved by EPA in writing, with a copy to MassDEP. In the event that any such vacancy in the office of Trustee is not filled by the Executive Committee within thirty (30) days after the receipt by the Executive Committee of a written request by EPA to do so, such vacancy may be filled by an appointment of a successor Trustee by a court of competent jurisdiction at the request of EPA . Any successor Trustee appointed by the Executive Committee or by a Court shall not be selected from among the Grantors, their officers, employees or representatives.

(d) Acceptance of Appointment by Successor Trustee(s). Acceptance of appointment as a successor Trustee shall be in writing and shall become effective upon receipt by the Executive Committee of notice of such acceptance. Upon the acceptance of appointment of any successor Trustee, title to the Fund shall thereupon be vested in said successor Trustee, jointly with the remaining Trustee(s), if any, without the necessity of any conveyance or instrument. Each successor Trustee shall have all of the rights, powers, duties, authority, and privileges as if initially named as a Trustee hereunder.

(e) Preservation of Record of Changes in Trustee(s). A copy of each instrument of resignation, removal, appointment and acceptance of appointment shall be attached to an executed counterpart of this Trust Agreement in the custody of the Group.

SECTION 11. INSTRUCTIONS TO THE TRUSTEE(S)

Notwithstanding anything herein to the contrary, the Trustee(s) hereby are directed to do the following in addition to other duties set forth in other provisions of this Trust Agreement:

(a) Have prepared quarterly financial reports during performance of the construction portion of the Work describing the manner in which the assets of the Fund are then invested and the current market value of such assets, as well as the obligations, income, and expenses of the Fund. Copies of such reports shall be transmitted in writing to the Executive Committee, to the Group's Project Coordinator (provided the Trustee(s) have received notice of the name and address of said Project Coordinator from the Executive Committee) and, upon request, to EPA or MassDEP, respectively.

(b) Have prepared financial statements within sixty (60) days of the Effective Date of the Consent Decree, as defined in the Consent Decree, and annually as of the anniversary of the Effective Date, during performance of the construction portion of the Work and the operation and maintenance portion of the Work describing the manner in which the assets of the Fund are then invested and the current market value of such assets, as well as the obligations, income, and expenses of the Fund. All financial statements shall be prepared on an accrual basis, and shall be in accordance with Generally Accepted Accounting Principles, applied on a consistent basis. Copies of such statements shall be transmitted in writing to the Executive Committee, to the

Group's Project Coordinator (provided the Trustee(s) have received notice of the name and address of said Project Coordinator from the Executive Committee) and to EPA and MassDEP.

(c) Advise, consult and confer with and otherwise inform the Executive Committee or the Group upon any request by the Executive Committee or the Group or with respect to matters arising out of this Trust Agreement, administration of the Fund, or any other matter which the Trustee(s), in their discretion, deem appropriate to bring to the attention of the Executive Committee and/or the Group.

(d) Have maintained records of all actions taken by the Trustee(s) with respect to matters arising out of this Trust Agreement or administration of the Fund. Copies of said records shall be provided to the Executive Committee or the Group upon request, and upon termination of this Trust said records shall be transmitted, together with all other records of the Trustee(s), to the Executive Committee.

The Trustee(s) shall have the right to assume and fully rely upon, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any Member of the Group has occurred.

SECTION 12. IMMUNITY AND INDEMNIFICATION

Each Trustee, whether initially named or appointed as a successor Trustee, acts as a Trustee only and not personally; and in respect of any contract, obligation or liability made or incurred by the Trustee(s) or any of them hereunder in good faith, all persons shall look solely to the Fund and not the Trustee(s) personally. The Trustee(s) shall not incur personal liability of any nature in connection with any act or omission, made in good faith, of the Trustee(s) or the Grantors in the administration of the Fund or otherwise pursuant to this Trust Agreement, excepting, however, liability which results from the Trustee(s)' gross negligence or willful misconduct. All Trustee(s) who serve hereunder shall be defended, indemnified and held harmless by the Fund and jointly and severally by the Grantors from and against any and all claims, damages, demands, causes of action, losses, costs and expenses, including attorneys' fees and court and arbitration costs, and any other losses of any kind or nature whatsoever arising during or on account of, in connection with or as a result of their performance hereunder or on account of any acts or omissions of the Group, the Executive Committee and their respective designee(s), unless attributable to the Trustee(s)' gross negligence or willful misconduct. The provisions of this section shall survive the termination of the Trust.

SECTION 13. INTERESTS NOT ASSIGNABLE OR SUBJECT TO CLAIMS OF CREDITORS

The interest of any Grantor in the Fund shall not be subject to anticipation or assignment, nor shall it be subject to the claims of any creditor of any Grantor.

SECTION 14. SPECIAL PROVISIONS RELATING TO EPA'S TAKEOVER OF THE WORK

If, at any time during the term of this Trust Agreement, EPA implements a "Work Takeover" pursuant to the terms of the Consent Decree and intends to direct payment of monies

from the Fund to pay for performance of Work during the period of such Work Takeover, EPA shall notify the Trustee(s) in writing of EPA's commencement of such Work Takeover, with a copy to MassDEP. Upon receiving such written notice from EPA, the disbursement procedures set forth in Section 4 hereof immediately shall be suspended, and the Trustee shall thereafter make payments from the Fund only to such person or persons as EPA, with a copy to MassDEP, may direct in writing from time to time for the sole purpose of providing payment for performance of Work required by the Consent Decree. Further, after receiving such written notice from EPA, the Trustee(s) shall not make any disbursements from the Fund at the request of the Group or the Grantors, including its or their representatives and/or contractors, or of any other person except at the express written direction of EPA. If EPA ceases such a Work Takeover in accordance with the terms of the Consent Decree, EPA, with a copy to MassDEP, shall so notify the Trustee(s) in writing and, upon the Trustee's(s') receipt of such notice, the disbursement procedures specified in Section 4 hereof shall be reinstated.

SECTION 15. CHOICE OF LAW

This Trust Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Massachusetts, except to the extent that Federal law shall apply to questions arising under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, or the National Contingency Plan promulgated thereunder.

SECTION 16. INTERPRETATION

As used in this Trust Agreement, words in the singular include the plural and words in the plural include the singular; and the masculine and neuter genders shall be deemed to include the masculine, feminine and neuter. The descriptive heading for each Section and Subsection of this Trust Agreement shall not affect the interpretation or the legal efficacy of this Trust Agreement. It is agreed that neither the entering into this Trust Agreement nor contribution to the Fund nor any action taken under this Trust Agreement shall be deemed to constitute an admission of any liability or fault on the part of the Trustee(s) or the Grantors, or any of them, with respect to the Sutton Brook Disposal Area Superfund Site, or otherwise, nor does it constitute a commitment or agreement, either express or implied, by any or all of them to undertake any further activities outside the scope of the Work, the Consent Decree, or the Participation Agreement.

SECTION 17. SEPARATE DOCUMENTS

This Trust Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 18. SUCCESSORS AND ASSIGNS

This Trust Agreement shall be binding upon the successors and assigns of the Grantors. No assignment or delegation of the obligation to make any payment hereunder will release the assigning Grantor from such obligation.

SECTION 19. EFFECTIVE DATE

This Trust Agreement shall take effect on the lodging of the Consent Decree with the United States District Court for the District of Massachusetts for approval. If, for any reason, the Court shall decline to approve the Consent Decree so that it does not become effective, then this Trust Agreement shall not take effect.

WITNESS the execution hereof by the Trustee(s) as of the date first above written.

**DECLARATION OF TRUST
SUTTON BROOK DISPOSAL AREA
SUPERFUND SITE
SETTLEMENT TRUST**

Signature Page

WITNESS the execution hereof by the undersigned Company by it or its authorized representative as of the date of this Trust Agreement.

Name of Company: _____

Signature of Authorized Official: _____

Title of Signer: _____

Company Taxpayer Identification Number: _____

Designated Representative for Receipt of Notice and Invoices:

Name: _____

Address: _____

Telephone Number: _____

**DECLARATION OF TRUST
SUTTON BROOK DISPOSAL AREA
SUPERFUND SITE
SETTLEMENT TRUST**

List of Appendices

- Appendix A: List of Grantors of the Sutton Brook Disposal Area Superfund Site Settlement Trust
- Appendix B: List of Original Trustee(s) of the Sutton Brook Disposal Area Superfund Site Settlement Trust

**DECLARATION OF TRUST
SUTTON BROOK DISPOSAL AREA
SUPERFUND SITE
SETTLEMENT TRUST**

APPENDIX A

**List of Grantors of the
Sutton Brook Disposal Area
Superfund Site Settlement Trust**

Appendix A

List of Grantors of the Sutton Brook Disposal Area Superfund Site Settlement Trust Sutton Brook Disposal Area Superfund Site; Tewksbury, Massachusetts

1. Ausimont Industries, Inc., for itself and on behalf of predecessor entities Compo Industries, Inc., Pandel-Bradford, Inc., and Pandel, Inc.
2. BASF Corporation
3. Boston and Maine Corporation, for itself and on behalf of predecessor entity Boston and Maine Railroad
4. Browning-Ferris Industries, Inc. (Massachusetts), for itself and on behalf of predecessor entities Barry Bros., Inc., Greenwood Disposal Company, Inc., and Miller Disposal Services, Inc.
5. Allied Waste Systems, Inc., for itself and on behalf of predecessor entity Reliable Rubbish Disposal, Inc.
6. BFI Waste Systems of North America, LLC, for itself and on behalf of Ace Disposal Service, Inc.
7. BTU International, Inc.
8. E.I. du Pont de Nemours and Company
9. Honeywell International, Inc.
10. Mallinckrodt LLC, for itself and on behalf of predecessor entity International Minerals and Chemical Co. on behalf of its subsidiary Kingston Steel Drum Co.
11. M/A-COM, Inc., for itself and on behalf of predecessor entity Microwave Associates, Inc.
12. Raytheon Company
13. Sears, Roebuck and Co.
14. Textron Systems Corp., for itself and on behalf of predecessor entity AVCO Corporation
15. Town of Tewksbury
16. Verizon New England, Inc. f/k/a New England Telephone and Telegraph Company
17. Waste Management of Massachusetts, Inc., for itself and on behalf of predecessor entity V. Canelas Co., Inc.
18. Waste Management Disposal Services of Massachusetts, Inc., for itself and on behalf of predecessor entity SCA Disposal Services of New England, Inc. - Eastern Division
19. Waste Management of New Hampshire, Inc., for itself and on behalf of predecessor entity P&T Container Service Co., Inc.
20. Zeneca, Inc., for itself and on behalf of predecessor entity Polyvinyl Chemicals Inc. a/k/a Polyvinyl Chemical Industries
21. Emhart Industries, Inc., for itself and on behalf of predecessor entity United Shoe Machinery Corp. (Bostik Division)
22. Holt & Bugbee Company
23. National Grid USA, for itself and on behalf of subsidiaries New England Power Company and Massachusetts Electric Company
24. Lockheed Martin Corp., for itself and on behalf of predecessor entity RCA
25. Tewksbury State Hospital (Massachusetts Dept. of Public Health)
26. The Gillette Company

**DECLARATION OF TRUST
SUTTON BROOK DISPOSAL AREA
SUPERFUND SITE
SETTLEMENT TRUST**

APPENDIX B

**List of Original Trustee(s) of the Sutton Brook Disposal Area
Superfund Site Settlement Trust**

R. Thomas Dorsey
de maximis, inc.
450 Montbrook Lane
Knoxville, Tennessee 37919-2705

Bennie Underwood
de maximis, inc.
450 Montbrook Lane
Knoxville, Tennessee 37919-2705

APPENDIX F-3

PERFORMANCE GUARANTEE FINANCIAL TEST DEMONSTRATION FOR A LOCAL GOVERNMENT OR POLITICAL SUBDIVISION

A Performing Settling Defendant that is a local government or political subdivision of the State (a “Political Subdivision”) shall establish financial assurance for its performance obligations under the Consent Decree in accordance with the following criteria.

1. The Political Subdivision shall maintain a rating of BBB or better, as issued by Standard and Poor’s, or Baa or better, as issued by Moody’s, on all general obligation bonds not otherwise secured by insurance, a letter of credit or other collateral or guarantee. If the Political Subdivision’s bond rating falls below such minimum, it shall comply with the financial ratios set out in 40 C.F.R. § 258.74(f)(1)(i)(B).
2. The Political Subdivision’s financial statements shall be prepared in conformity with Generally Accepted Accounting Principles for governments and be audited by an independent certified public accountant.
3. The Political Subdivision shall meet the following additional criteria.
 - a. It shall not be in default on any outstanding general obligation bonds;
 - b. It shall not have operated at a deficit of 5% or more of total annual revenue in each of the past two fiscal years;
 - c. It shall not have received from the independent certified public accountant auditing its financial statement an adverse opinion, disclaimer of opinion, or other qualified opinion that materially impairs its financial assurance for its performance obligations under the Consent Decree;
 - d. The dollar value of the financial obligations under the Consent Decree for which it provides financial assurance shall not exceed 43% of its total annual revenue.
4. Within 90 days following the close of each fiscal year, the Political Subdivision shall provide a letter to EPA, with a copy to MassDEP, from a responsible financial officer certifying that the Political Subdivision continues to comply with each of the criteria in Paragraphs 1-3, above, with respect to the Political Subdivision’s most recent bond rating, financial statements and audit opinion.